

Author Paul Hubbard *

Title China's Regulations on Open Government Information:
Challenges of Nationwide Policy Implementation

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Abstract

China's Regulations on Open Government Information introduce a freedom of information style disclosure mechanism across China from 1 May 2008. Despite sincere political commitment, the central government is facing enormous obstacles in ensuring consistent implementation of the regulations nationwide. The center is not providing a strong legal text or clear directives to guide implementation. Rather, central ministries and local governments are developing a range of implementation models. This allows for innovation in government organs already committed to the open government information policy, but leaves major problems with compliance amongst government organs that see no benefit in information disclosure.

1 CHINA'S REGULATIONS ON OPEN GOVERNMENT INFORMATION: CHALLENGES OF NATIONWIDE POLICY IMPLEMENTATION

The consistent nationwide implementation of China's Regulations on Open Government Informationⁱ (OGI) is an overwhelming challenge for the Chinese government. The regulations give Chinese citizens the right to receive government information on request, through a mechanism similar to 'freedom of information' (FoI) regimes around the world (Horsley 2007). Despite central political commitment to the policy, the implementation of OGI faces significant challenges within China's decentralized bureaucracy.

Understanding the implementation of disclosure policy in China is not a simple matter of comparing the regulations with model FoI laws. Australian FoI expert Rick Snell warns against the misconception that "open government just needs the right switch (legislation) to be flicked ... (or) that FOI is a readily transplantable law and therefore there is little need for analysis." (Snell 21) From a North American perspective, Alasdair Roberts notes that statutory freedom of information rights can be held hostage by diffident officials who either inadequately resource implementation or consistently exercise discretion contrary to the spirit of the law (Roberts 2002). In the Chinese context, Jamie Horsley stresses that "no matter how good a law or regulation may sound, or how flawed it may appear, the key to its success will be how it is carried out." (Horsley 2007). This paper attempts to provide an introduction to this process of OGI implementing across China.

To answer this question, this paper draws on a number of open-source Chinese-language documents already publicly available on Chinese government websites. Targeted internet searching has gleaned copies of official notifications and opinions, training manuals, flowcharts, transcripts of speeches, reports of meetings and even "frequently asked questions" aimed at provincial bureaucrats. This information has been put into context thanks to background interviews with Chinese academics and foreign experts in Beijing conducted from September to December 2007.

The paper finds sincere central political support for the policy based on the promise that popular supervision of the administrative apparatus can aid the center's control of a

decentralized government. The regulations are a top-down political project rather than a liberal political reform. But despite central commitment to the policy, the nationwide implementation of the policy faces obstacles.

The center's ability to compel local governments to implement the regulations effectively is hampered both by the ambiguous nature of the text, and weak rule of law. The regulations themselves cannot drive implementation, but neither has the center defined a specific implementation model. Instead, it is left to local governments and agencies to develop their own institutions and work processes.

This decentralized approach to policy implementation has resulted in ministries and local governments adopting varied approaches to implementing the Regulations. Some local governments, such as Sichuan, have developed their open government information work along with the development of e-government. National ministries and agencies, like the State Environmental Protection Agency, that see the benefits of transparency their own regulatory work have gone beyond what is required by the regulations.

Giving agencies the latitude to develop their own systems works well for government organs that see the value to transparency for themselves, while posing difficulties those organs that see transparency as a threat rather than an opportunity. Because of this, it is likely that the implementation of the regulations within China will be patchy. There will be both promising and disappointing results for the Open Government Information regulations. But the overall success of the policy rests not on the regulations alone, but also on the way in which further institutional reforms cause open government information to become valuable in the hands of citizens and civil society.

2 AN INTERNALLY GENERATED REFORM WITH CENTRAL POLITICAL SUPPORT

Open government information is seen on the one hand as instrumental in ensuring that information resources are used most efficiently, and on the other as a method by which the central government can attempt to control the organs of the state. In a one party unitary state such as China, we would expect that high level central political support to be a great boost to implementation of the policy.

2.1 FREEDOM OF INFORMATION FOLLOWING A LONG HISTORY OF SECRECY

The Chinese state has a long history of maintaining monopolies on official information. In two thousand years of Chinese bureaucratic history, official secrecy has been the norm (Horsley 305). There were strong motivators for this at both institutional and individual levels. Institutionally, an information asymmetry between the ruling bureaucracy and the subjects made it easier to maintain authoritarian political control (He 2004 182). For individual officials, control over information translated into power. The ability to control the flow of this scarce resource was an extremely valuable tool within the bureaucracy (Academic A).

While Chinese bureaucracy is outstanding in terms of its centuries-long institutional history, it was hardly alone in the view that "information is the currency of power" (McMillan 2002 10). Reforming institutionalised preferences for official secrecy is a challenge for all bureaucracies introducing open government information or freedom of information. The fact that China has a long history of bureaucratic secrecy is not the most remarkable aspect of open government information.

The real paradox of open government information in China is its introduction into a non-democratic political system. Freedom of information has a strong ideological connection with democracy. The most famous quote on the subject comes from one of the United States' founding fathers, James Madison:

A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own governors must arm themselves with the power which knowledge gives (Madison, Padover 1953 337)

By contrast, despite significant economic liberalization, China's political system remains constructed upon a Leninist political structure, under the uncontested leadership of the Chinese Communist Party. After the revolution, the Chinese communist regime reinforced commitment to state secrecy. Under the communists, the reach of the state expanded into almost every aspect of daily life, inside a political structure that required carefully controlled vertical information flows (Saich 2001 306). Since then the Chinese state has withdrawn

somewhat from everyday life, but the basic political structure remains unchanged. How then to explain the adoption of what appears to be a liberal democratic policy tool into a Leninist political system?

2.2 OPEN GOVERNMENT INFORMATION AS A TOOL FOR BUREAUCRATIC CONTROL

The OGI Regulations are instrumentally valuable to the Chinese regime. The OGI mechanism is intended to compensate for the central government's weak administrative control of its subordinate government organs. The regulations are also intended to promote the efficient use of government information resources. By reducing information asymmetries, the center hopes to reduce the scope for the bureaucracy to misuse government information for rent-seeking and outright corruption.

In countries with established freedom of information regimes, the right of citizens to access government files directly only became a necessary means of establishing direct accountability between individuals and bureaucrats at a time when existing political and legal mechanisms were perceived to be failing (Terrill 2000). According to Peerenboom, policy tools like freedom of information were introduced as a "postmodern approach to administrative law":

As people in Western rule-of-law countries lost faith in agencies as neutral truth seekers, they demanded greater transparency and public participation in order to hold government officials accountable (Peerenboom 2002 425)

Although Chinese government agencies were never mistaken for "neutral truth seekers", there has been rising consternation in China about how to hold government officials accountable. The economic emergence of China has, since 1978, required significant political decentralization. This reduced the center's political control at the same time that the emerging private economy gave officials a plethora of opportunities to exchange official information for money and power (Saich 2001 20). Paramount leader Deng Xiaoping was also concerned that state monopolies on information would lead to inefficient resource allocation (Horsley 292). Deng's economic intuition was later backed up by Stiglitz' work in information economics, which outlined how imbalances of information held by parties (an information asymmetry) can give rise to market distortions and bureaucratic rent seeking (Stiglitz 2002

58).

Controlling administrative behaviour in this new environment therefore required changes to information flow. New information technology allowed the central government to adopt systems internal to government to help monitor the decentralized organs of the state (Ma, Chung & Thorson 2005 21). Externally, popular supervision of administrative affairs was also necessary to make up for the central government's inability to monitor all its organs down to the local level. This required a change in policy toward official information. As one Chinese academic describes it:

the influence of the administrative apparatus on the people's daily life became greater and greater. However public awareness of traditional means of controlling bureaucratic power was not yet able to control the developed administrative system. The public needed a way to deal with the system directly. A precondition for the public to supervise the system is that they are able to adequately understand basic information about its rules, its authority, its duties as well as its procedures. By opening up the system of administrative information, it just so happens that the public's general need for information can be met. (my translation) (Liu 2006 68)

By looking at Open Government Information regulations from this economic perspective, and recognizing the center's weakness when it comes to controlling all the decentralized organs of the state, it is possible to resolve the apparent paradox of open government information inside a communist state. Decisions of real political importance remain outside the scope of the regulations as they are made within the Party apparatus and therefore are not subject to the OGI Regulations. In this way the political ramifications of the regulations are limited to controlling bureaucracy:

empowering ordinary people to serve as watchdogs can make sense even to dyed-in-the-wool Leninists, who, like trucking companies that print 800 numbers on the back of their rigs, need on-the-ground sources of information if they are to uncover and stop misconduct by their local agents. (O'Brien, Li 1999 44)

Because of this, Open Government Information regulations in China can be considered as an 'internally generated reform' backed with significant central political capital. China's accession to the World Trade Organization did require some rudimentary transparency at the

level of laws and regulations (World Trade Organization 2001 Part II, C(1)) , but the OGI Regulations go much further than required by WTO. In this way China has overcome what is perhaps the largest hurdle in the implementation of disclosure laws – central political commitment.

China is therefore at an advantage in comparison to other developing states which adopted disclosure laws due to pressure from international financial institutions or aid agencies. Within these countries there is little systematic evidence of disclosure laws having profound effects on the flow of government information. Pakistan for example adopted its freedom of information ordinance as a condition of receiving certain IMF funding (Roberts 2006 110), but has not demonstrated strong internal political commitment to it. By contrast, the political commitment of the Chinese central government to this policy is sincere.

2.3 TRANSPARENCY WITH CHINESE CHARACTERISTICS

China has had the capacity to adapt its Regulations on Open Government Information to its own local conditions, rather than relying on 'off the shelf' FOI models, or being beholden to international experts. For the nationwide regulations, the State Council was able to draw a model for open government information that had already been trialled locally in Shanghai (Horsley 2007). Scholars from Chinese universities, as well as the Chinese Academy of Social Sciences also contributed to the development of the final regulations. The final text is a product of compromise, resulting in a weaker disclosure law than many transparency experts would have liked (Academic A). Importantly though, it remains within the political comfort zone of the central government which, from a pragmatic perspective, is better than a robust yet politically untenable disclosure law.

The formulation of the OGI Regulations have received some external support. For example, the EU-China Information Society Project has provided technical assistance in formulating and implementing the policy from Europe via the *EU-China Information Society Project* (Sutton, Holsen 2006). However this assistance has been largely in response to Chinese needs, rather than attempting to drive the Chinese policy process. Likewise, the American Bar Association has supported the study of open government information in China

as part of its rule of law program. Significantly though, unlike other developing countries that have had the benefit of international transparency experts for the formulation of disclosure laws or policies, the Chinese have remained in the driver's seat.

This has ramifications for the promotion of disclosure policies elsewhere in the developing world. Developing countries impressed more with Beijing's economic development than the Washington Consensus may begin to take disclosure policies more seriously, following China's lead. China's "ownership" (Roberts 2006 110) of its disclosure policy may encourage other developing world governments to consider seriously the benefits of transparent government, rather than dismissing freedom of information as yet another costly institutional desideratum of Western development experts. However China's standing within the developing world is quite unique, having a reasonably strong administrative capacity to formulate policies peculiarly adapted to local conditions.

The OGI Regulations in China are best seen as controlled, internally generated reform. This in contrast to the Australian experience of freedom of information in which freedom of information is an external public assault upon government. For example, Snell describes cartoons depicting citizens 'outside the citadel walls seeking entry, in a non-violent way, to the informational treasures held within.' (Snell 2001) The Chinese approach to the same metaphor (Illustration 1, (People's Republic of China, Jiangsu Province, Zhenjiang Municipality, Office of Legal Education 2007)) shows parts of the walls being carefully dismantled within by construction workers .



Illustration 1: Open Government Regulations: Building Government in the Sunshine

Implementation of the Regulations on Open Government Information in China is therefore not as difficult politically as might be expected in a non-democratic regime. Although it marks a significant change from previous bureaucratic practice, it has been adapted to the Chinese political environment and has political commitment behind it. Although the regulations do mark a shift in the relationship between citizens and the state, they are not part of any attempt at liberal political reform. The central government's political commitment to the regulations is not the main obstacle. Rather, the challenge is to implement these regulations on a top-down basis (Academic A).

3 THE CHALLENGE OF NATIONWIDE POLICY IMPLEMENTATION

The political will of the center in China does not translate immediately into implementation. Observers unfamiliar with China might consider that the State unbounded by democratic checks might more easily command government reforms that in more liberal political structures. This is not the case. The agency problem is alive and well within the Chinese state. The central government is faced with the challenge of implementing a significant reform, across the whole of government, backed with a somewhat ambiguous legal text. Moreover the center has chosen not to providing specific implementation instructions to the agencies and local governments responsible for policy implementation.

3.1 AN ENORMOUS NATIONWIDE TASK

The State Council General Office, which has been given the task of overseeing the

nationwide implementation of the regulations, is aware that "[t]he time for preparing for the implementation of the regulations is very tight, the workload very heavy, and the standard very high" (People's Republic of China, State Council, General Office 2007b). But this is something of an understatement when the sheer size of the Chinese state is considered.

The new regulations need to be implemented by around fifty national ministries, commissions and agencies which sit under the highest executive organ of the Chinese State, the State Council. The regulations apply to the thirty-one provinces, autonomous regions and special municipalities in China under the jurisdiction of the State Council. Below this there are hundreds of subordinate city and county governments which will also need to adopt their own implementation measures, overseen not by the central government but by their immediate superior levels of government.

The time that each of these government agencies have in which to adopt the necessary systems to handle open government information requests is very short. The regulations, which are scheduled to come into effect from 1 May 2008 were only approved by the State Council on 5 April 2007 and not published until 24 April 2007 (Horsley 2007). This is quite short compared to the United Kingdom, which in its 2000 Freedom of Information Act gave itself five years to fully implement the law. The State Council General Office has certainly been given an extraordinary task to ensure nationwide implementation of the regulations in just over twelve months.

3.2 WEAKNESS OF THE REGULATIONS

The OGI Regulations do not even enjoy the highest legal status. They are not top-level laws of the National People's Congress, but rather only regulations of the State Council. This subordinate status makes them less likely to be closely regarded by officials, lawyers and law students (Academic B). There are some advantages of this status – notably improved flexibility for the State Council to revise the regulations to iron out problems over the next few years.

The formal legal tools with which the center might try to force compliance are fairly weak. Even if the text of the regulations was tightly drafted, controlling bureaucracy effective through administrative law still requires a reliable judiciary with the capacity to enforce

judgments independently of local political pressures. China is still in the process of constructing this basic legal infrastructure (Peerenboom 2002 396); until this is completed, the central government's ability to compel bureaucratic compliance with the regulations remains low.

Even bureaucrats who are attempting to apply the regulations in good faith are likely to tend toward non-disclosure. Not only does this reflect normative bureaucratic attitudes toward secrecy, but also the spectre of personal criminal responsibility for the act of "disclosing government information that should not be disclosed" (Article 35(5)). This threat of criminal sanctions for the improper release of information appears to work against the overall policy goal of disclosing government information.

The regulations themselves do not contain tight legal definitions to guide disclosure choice. In November 2007 the EU-China Information Society Project released a report for the Chinese government highlighting lessons that China could learn from the European experience of Freedom of Information. The report highlighted a number of ambiguities in the regulations that might hamper its effectiveness. To clarify the regulations, the Report suggests that there needs to be careful definitions for such terms as "privacy" and "business secret" to ensure the appropriate balance between public disclosure and data protection (Carter, Lv 2007 80-84).

The availability of Open Government Information on request could be further constrained by a 'needs' test. The EU Report also draws attentions to Horsley's concerns that the language of Article 13 potentially introduces a 'needs' test on the availability of official information (Horsley 2007). Article 13 states that information is available "in accordance with the special requirements of their own production, livelihood, scientific research". The actual implementation of open government provisions within China has not required any need to be specifically stated by the applicant – the only information required is the name and contact details of the requester, identification of the information required, and an indication as to the required format. Nevertheless, it is easy to imagine a government agency exploiting these textual ambiguities to find plausible reasons to refuse disclosure.

High level Chinese officials have also pointed out ambiguities that are not immediately apparent, suggesting that the political intention is not to take open government too far too

fast. The Central Disciplinary Commission of the Party, shortly after the State Council's regulations were promulgated, put forth its own opinions on how the regulations were to be read. Comrade Yang Xueshan promoted a restrictive interpretation of the provisions allowing access to personal information:

To have all personal information available to each person, would not be in keeping with the basic condition of our country nor related to government policies and regulations. The most clear example of this is personal files. Within China's system of personnel management, personal files are not open to individuals. *For this reason the 25th paragraph imposes restrictions on providing some personal information, only listing three examples, namely - taxes and fee payments, social security, and medical treatment (etc.).* However, this enunciation also uses the word 'etc.' This 'etc.' indicates that personal information outside these three categories could possibly be released to individuals. Following social progress, the scope of public information may be able to progressively expand, as yet we are still moving towards perfecting this practice.ⁱⁱ (my translation and emphasis) (Chinese Communist Party Central Committee Discipline Inspection Commission, General Office 2007)

Ambiguities like this are not the result of careless drafting, rather they reflect internal political fear of taking open government information too far. While the central government has sincere commitment to the policy of open government information for the purpose of administrative control, it is still wary of opening up politically sensitive information. Chinese bureaucrats already attuned to careful handling of political affairs (Zheng, Lye 2004 49) will need to remain sensitive to extra-legal concerns when implementing the policy.

But while the textual ambiguity might be essential to make the regulations politically feasible, it makes the task of actually implementing the policy more difficult. Government entities that are reluctant to open themselves to public scrutiny may exploit the weaknesses of the text to undermine the open government information policy.

3.3 LACK OF DETAILED CENTRAL DIRECTION

Given the ambiguous nature of the text of the regulations, local governments might look to the central government for more precise guidance for the implementation. The actions taken by the central government in promoting the policy should give more precise

indication of how center is promoting implementation from the top. The challenge for implementation is not so much that the center will attempt to impose OGI Regulations in a way unsuited for local conditions, rather that the center's failure to give clear policy guidance will lead to inconsistent application of the nationwide regulations.

The only official notice from the General Office since the regulation was announced was a 4 August 2007 notification to subordinate provinces, autonomous regions, centrally controlled municipalities, government departments and agencies (People's Republic of China, State Council, General Office 2007b). The work notification provided seven tasks to these lower levels of government on implementing the regulations. The document itself is quite short, consisting of only one or two paragraphs per point.

The first point of the State Council General Office notice is to promote understanding the importance of the regulations and the pressing nature of implementation. Secondly, the Open Government Information Catalogue and Open Government Information Guide is to be prepared by March 2008, two months before the policy comes into effect. Third, each organ must formulate its own internal procedures and standards for handling information and dealing with information requests. This paragraph also stresses the importance of a mechanism for evaluating state secrets to ensure that the "problem of secrets leaking does not arise". This mechanism is required by Article 14 of the Regulations.

The fourth task urges the conscientious implementation of "related measures". These related measures include preparing public reading rooms, fixing a schedule of fees for handling various requests. The fifth concerns training: "each district and department must formulate a plan for education and training work and fully implement this plan. At every level administrative training institutes must familiarize civil servants with main points of the regulations, and strengthen related work training."

The sixth task urges government organs to exploit government websites as a platform for implementing the policy. This section demonstrates the close relationship between the Open Government Information policy, and China's development of e-government. The final task requires each locality and department to designate a unit and officer to be responsible for the implementation of the policy at that level. The contact details for the responsible

person were to be provided to the State Council General Office by September 2007.

Beyond bringing the regulations to the attention of local administrators, and emphasizing some of the key policy requirements found in the regulations, these directions do not provide tight constraints on exactly how the policy is to be implemented at the local level. Other than the requirement that the Open Government Information Catalogue and Guide are to be prepared by March 2008, and that responsible persons should be selected in September 2007, the circular leaves the details of policy implementation to lower levels of government.

4 VARIATIONS IN POLICY IMPLEMENTATION

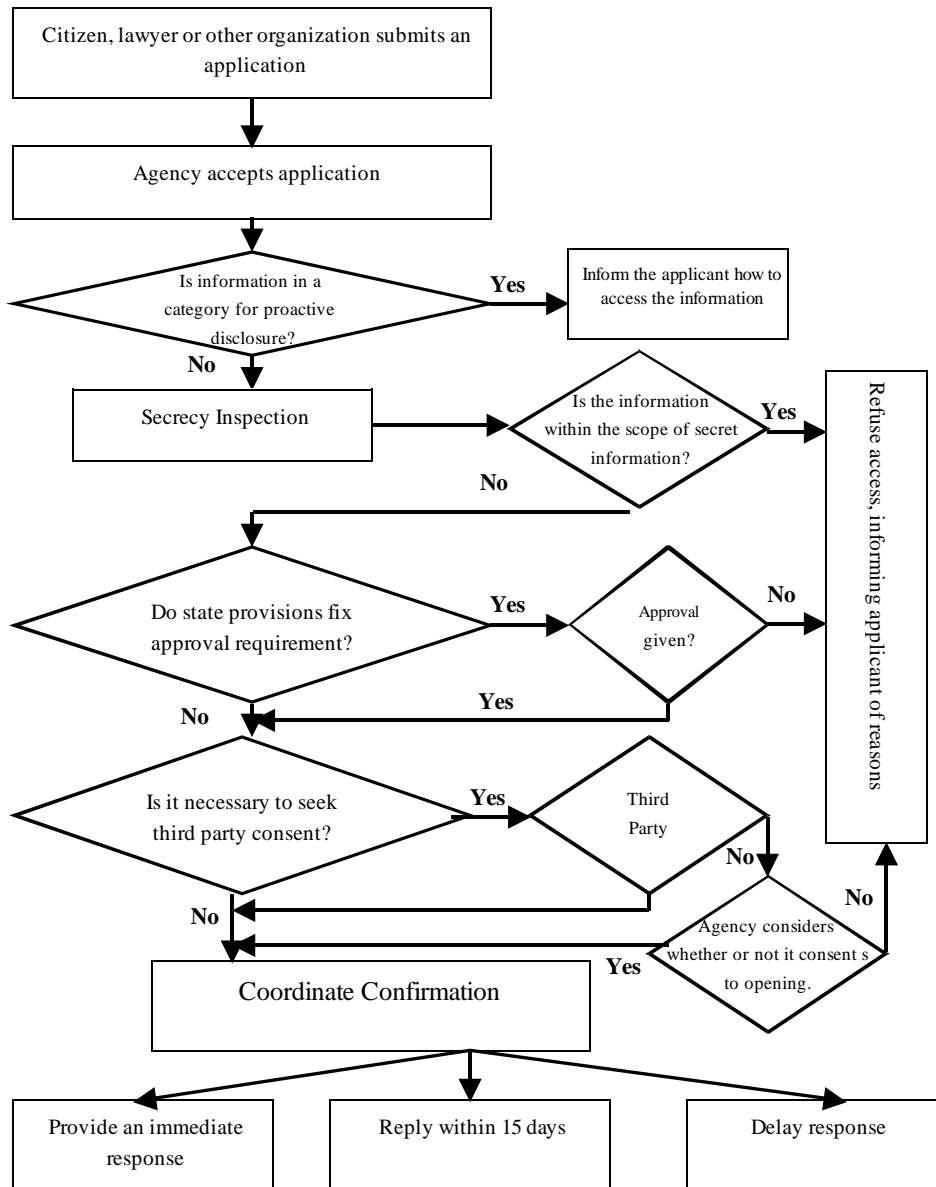
The ambiguity of the actual legal text, weakness of rule of law in China, and the center's reluctance to provide detailed orders for implementation, give bureaucrats in ministries and local governments a great deal of flexibility in adopting the policy. Local variance in attitudes and resources for open government information work has resulted in different institutions and processes being adopted for open government information work. Some provinces and agencies have identified the benefit in transparency and are going all out to implement the regulations, and have developed their own innovative approach to implementation. Others not so committed and with limited implementation experience enjoy the same flexibility to implement the policy poorly. Given the variation, it will be difficult not only for the central government to monitor open government information work, but also to evaluate whether or not it has been successful.

4.1 INSTITUTIONS AND WORK PROCESSES

The loose nature of these formal implementation directions give provinces the ability to adapt implementation according to their own comfort with the policy. Sichuan Province for example, known for its recent enthusiasm for OGI work, has adopted in its own implementation materials the principle that "disclosure is the norm, secrecy is the exception" (my translation) (People's Republic of China, Sichuan Province, General Office 2007). This would appear to satisfy one of Horsley's indicators for the successful implementation of this policy - that the central government "permits and even encourages local governments to continue implementing their more liberal, existing OGI regimes" (Horsley 2007). But the

center's own lack of engagement with the specifics of policy implementation make it difficult to determine the degree to which these more liberal interpretations of the policy are centrally approved.

Beyond what is suggested by the text of the regulations, there is no standardized central approach for handling Requests for Open Government Information. Each agency's "Open Government Information Guide", which is required by the regulations to be produced and published, often contains a flowchart illustrating the manner in which requests for Open Government Information will be handled internally by the agency. Table 1 below is an English translation of such a flowchart from Qingdao in Shandong Province.ⁱⁱⁱ But this by no means represents a centralized or standardized approach.



Text 1: Open Government Information Request work flowchart (my translation)

Appendices A1-A5 contain copies of other representations of the same work process (although they are only a small sample of different flowcharts created by different government agencies). Even without translating from the Chinese, it is obvious that different agencies are interpreting the same basic task in quite different ways.

Inconsistent implementation increases the difficulty for the center to monitor and control the progress of policy implementation. The State Council Legislative Affairs Office has already conducted training in Beijing to which every municipal and county government and government organ was invited to attend. Between October and December 2007, six training sessions were conducted, with each three-day session having a capacity of 500 attendees (State Council, Office of Legislative Affairs 2007). But if the regulations are not being more or less consistently applied across the country, then it is unclear how closely the center can provide specific guidance in a three day training session.

Inconsistent OGI implementation also makes it more difficult for officials to specialize in OGI work across the whole of government. One Chinese academic argued that the creation of an expert career path within open government information was essential if decisions on information disclosure were to be based on a methodical application of the regulations (Academic B). An approach to the regulations which is ad hoc, varying between organs of government, makes it difficult to establish this kind of expert career path.

The center's laissez faire approach to implementation also weakens the overall anti-corruption policy inherent in opening government information. Rather than creating a strong centralized information commission to oversee implementation and to review disclosure decisions, the nationwide implementation is coordinated from the State Council's General Office. While this office oversees implementation at the level of Province or national Ministry, it does not directly supervise the work of lower levels, who are instead supervised directly by their superior agency.

This is consistent with regular structures of administrative supervision within China. But as official corruption in China becomes increasingly involves collective networks (Ting Gong 2006 458), it is entirely possible that superior levels of governments will have the same interests as their subordinates in refusing to disclose incriminating information. Rather than

introducing an external agency to arbitrate whether the regulations require disclosure (even if remaining sensitive to political concerns), the policy as interpreted locally can reinforce information asymmetries.

4.2 IMPLEMENTATION WITHIN LOCAL GOVERNMENTS

Given the center's unwillingness or inability to control local implementation of the regulations, it is likely that significant variation will be observed in the success of the policy. China is not a federal state: its local governments are nominally accountable to Beijing. However the decentralization that was necessary for China's economic success in the 1980s and 1990s also created powerful incentives for local governments to pursue their own interests independently of Beijing. The response of individual local governments and their agencies to the OGI regulations is likely to reflect these interests.

Local experiences with OGI vary. Twelve provinces and special municipalities had already adopted their own local measures on Open Government Information prior to the promulgation of the national regulations. The most advanced has five years' experience with the policy in advance of the national regulations (Wei 2007). The two most famous cases of previous OGI implementation in China were in Shanghai Municipality and Guangdong Province, both regions well known for their economic development. But local OGI measures have also been adopted by poorer governments. Sichuan province, in the poorest quintile of Chinese provinces (based on 2005 per capita GDP) has been enthusiastically promoting its own OGI since 2005.

Poorer provinces are still responsible for allocating local resources to OGI work. Although there is no strong correlation between a province's GDP and its adoption of local OGI measures, the capacity to implement OGI may nevertheless be constrained in poorer provinces. Sichuan Province has set aside three officials for OGI work within its General Office. Wealthy Shanghai by contrast has a staff of over a hundred officials within the Shanghai Municipal Informatization Commission (Academic C). Even poor provinces that are enthusiastic about OGI work are constrained by the resource demands of OGI.

This means that Shanghai, although recognised as a leader in local OGI implementation, may have few lessons to offer poorer provinces with their policy

implementation. In explaining the success of OGI in Shanghai, Chinese experts stressed the uniqueness of Shanghai, both in terms of its economic development and its political openness (Academic A, Academic B). According to European observers, OGI is an "essential complement" to the city's rapid economic development (Sutton, Holsen 2006 52). The relative success of OGI implementation in Shanghai will not be easily translated horizontally to other local governments.

That said, some horizontal policy has been occurring. This happens through both formal and informal networks. The center promotes meetings and video conferences designed to showcase different government organs' implementation experience and to recognise governments that have been implementing the policy well (Heilongjiang Province, Open Government Affairs Office 2007). The flowchart in Table 1 above is a good example of horizontal diffusion in action. Although it appeared first in Qingdao (Shandong Province), it has later been adopted in parts of Sichuan Province and Hunan Province. Sichuan Province has also developed many original training materials that are readily available on its provincial websites. This horizontal information sharing makes up for some of the lack of central implementation materials.

This kind of policy implementation at a local level also allows for adaptation to local conditions. For example, Sichuan Province has not been forwarding the instructions it has received from the State Council General Office directly to its own subordinate levels of government. Rather it has substantially adapted the policy to integrate open government information with its own e-government policies (People's Republic of China, Sichuan Province, General Office 2007). This involves a web-based information system on which the details of records are stored, marked as open, open on request, or closed. If a record is marked as closed, then the reasons for non-disclosure must be stated on the system (Sichuan Province 2007). Sichuan has already been cited by the central government for its outstanding results in implementing the national regulations (People's Republic of China, State Council, General Office 2007a). By not insisting on a uniform approach to implementation, the central government is able to take advantage of these types of local policy innovations.

Not all provinces are taking such an innovative approach. Some local governments

appear have adopted a 'wait and see' approach to implementation. The Inner Mongolia Autonomous Region, having no prior OGI experience, simply forwarded the State Council's notice on OGI implementation to its own subordinate agencies and city governments, with an additional two paragraphs further exhorting the policy and setting specific regional deadlines (People's Republic of China, Inner Mongolia Autonomous Region, General Office 2007). Although Sichuan's innovations indicated some enthusiasm for the OGI Regulations, the absence of innovation does not necessarily mean the opposite. What it does show is that there is considerable variation between local governments in terms of attitude toward implementing the regulations. For this reason we can expect to see significant regional variation in the openness actually achieved by the policy.

There are some, probably rural, areas in which the regulations themselves might have little practical impact. In less developed areas where there are few channels for information, the incentives for local officials to protect their information monopoly are high. Some rural officials are already practiced at information strategies that will be useful for non-compliance with the Regulations:

In Dangshan County, Anhui Province, when villagers went to a township to request central and provincial circulars regarding the tax-for-fee reform, township officials said that they had received no such documents and had only been notified orally. (O'Brien, Li 1999 33)

In some circumstances control over information is exercised even more tightly:

In Henan, for example, the Qixian County public security bureau detained a man for fourteen days in 1998 for 'distorting facts, spreading rumours, and instigating disturbances,' simply because he publicized a central decision concerning rural tax and fee burdens that he had read about in the Henan daily (O'Brien, Li 1999 33)

Ultimately, practices like this will confound the nationwide success of OGI. Some local governments will conscientiously and enthusiastically implement OGI at a local level. But others may not go beyond the bare minimum necessary to recognize the regulations; such "feigned compliance" is common in the history of both imperial and Communist Chinese bureaucracy (Pye 1992 237). As discussed earlier, the central government's capacity to ensure consistent implementation of the regulations is weak, lacking strong institutional or

legal mechanisms with which to force recalcitrant local governments to erode their own information asymmetries. This is the paramount challenge for nationwide OGI Implementation.

4.3 IMPLEMENTATION WITHIN NATIONAL MINISTRIES AND AGENCIES

Government ministries and agencies directly under the State Council's jurisdiction also demonstrate varied levels of commitment to the policy. Although closer to the supervision of the State Council General Office, national ministries are still free to decide their own institutional response to open government information. The State Grain Administration, for example with a total staff of 75 is "in charge of handling concrete businesses of national grain distribution (sic) macro-control, guiding the nationwide grain sector and administering China's central grain reserves" (State Grain Administration). Perhaps not anticipating much in the way of open government information requests, the notice circulated by the State Grain Administration General Office in response to the State Council's directions consists of four short paragraphs to "reinforce" and "raise awareness" of general aspects of open government work (People's Republic of China, State Grain Administration, General Office 2007).

The reaction of the State Environmental Protection Authority (SEPA) has been much more impressive. SEPA is not only subject to the national OGI regulations, but has also formulated its own detailed method for Open Environment Information to come into effect simultaneously with the OGI regulations next May. SEPA's Open Environment Information method was been were adopted just days after the OGI measures were signed off by the State Council (People's Republic of China, State Environmental Protection Agency 2007).

The information request mechanism in SEPA's method is closely modelled on the national Open Government Information Regulations, but the class of information to be made available has been carefully adapted for environmental context. An important difference in the tenor of Open Environment Information is that it does not contain the language, found in the national OGI Regulations, that the information request is "based on the special needs of such matters as their own production, livelihood and scientific and technological research" (People's Republic of China, State Council 2007). SEPA has also indicated that it will also not

rely on the "business secrets" exemptions as an excuse for non-disclosure (China Youth Daily 2007).

SEPA's interest in Open Government Information, and the effort it has expended to formulate its own derivative Open Environment Information method is perhaps explained by its status as a regulatory agency with limited resources and weak powers. To compensate for this, the data generated by SEPA can serve as an input into the 'citizen analytical engine' (Hubbard 2005) – that is the network of researchers and NGOs with the capacity and inclination to analyse and synthesize the data. A promising example of this in is the "Institute of Public & Environment Affairs"iv which has used data sourced from environmental protection bureaux and media reports, to draw up a web-accessible maps of water pollution and air pollution (China Youth Daily 2007).

This suggests a shift from traditional modes of governance, in which information asymmetries were cultivated to maximize power. Regulatory governance appears to be strengthen when the information flow between the regulating agency and the public is increased. For these types of institutions, incentives already exist to implement open government measures. The challenge for the State Council General Office will be to ensure that other agencies with weaker incentives to disclose nevertheless take OGI implementation seriously.

5 WHERE TO NEXT? THE VALUE OF OPEN GOVERNMENT INFORMATION

After a long history of official secrecy in China, the new nationwide regulations on Open Government Information represent a genuine political commitment to expose bureaucracy to popular supervision. Central policymakers realise that government monopolies on information lead to inefficiency, rent seeking and outright corruption. Through its regulations, the central government is attempting to get government information flowing to citizens, but turning the policy into real information flows withing each of China's provinces and executive organs is a truly daunting challenge.

Despite the enormous practical difficulties of nationwide implementation, the

Regulations on Open Government Information enjoy a good chance of long term success. The regulations are built on coherent policy foundations which enjoy political support at the highest level. Although the central government lacks the capacity to force local governments to implement the regulations on a consistent basis, the flexibility inherent in the center's approach means that positive innovations will emerge from the myriad of institutions and processes that will be adopted at a local level. Amongst disappointing results will be successful models that might be copied. Like freedom of information in established democracies, open government information in China has a long way to go.

Successful implementation of the policy is also contingent upon citizen demand for information. This cannot be taken for granted – for historical reasons already discussed, Chinese citizens do not have normative expectations of a 'right to know' (Academic A, Academic B). Episodes such as the cover up of Severe Acute Respiratory Syndrome (SARS) in 2002-2003 stoked popular demand for greater disclosure (Horsley 291-292), but the open government information project remains internally driven.

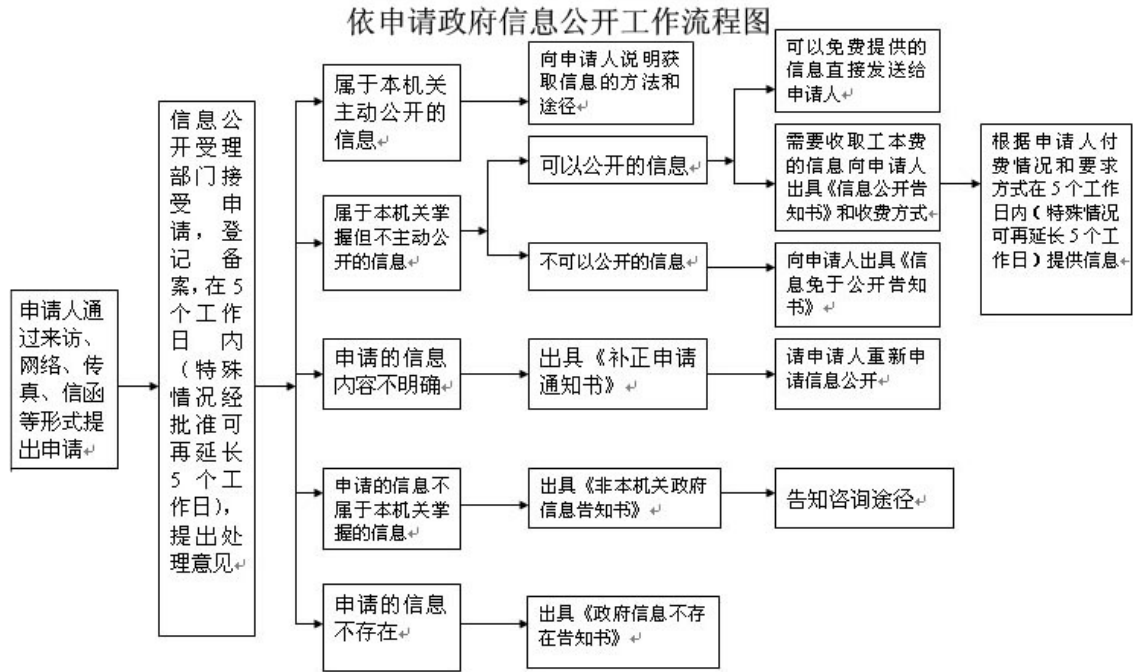


Illustration 2: "Our country announces first Open Government Information regulations guaranteeing citizens' right to know"

Public awareness of the regulations is the first step to generating demand for information. The advertisement in Illustration 2 (Hainan Province 2007) has appeared in various provinces, indicating some of the types of information to be disclosed on an agency's

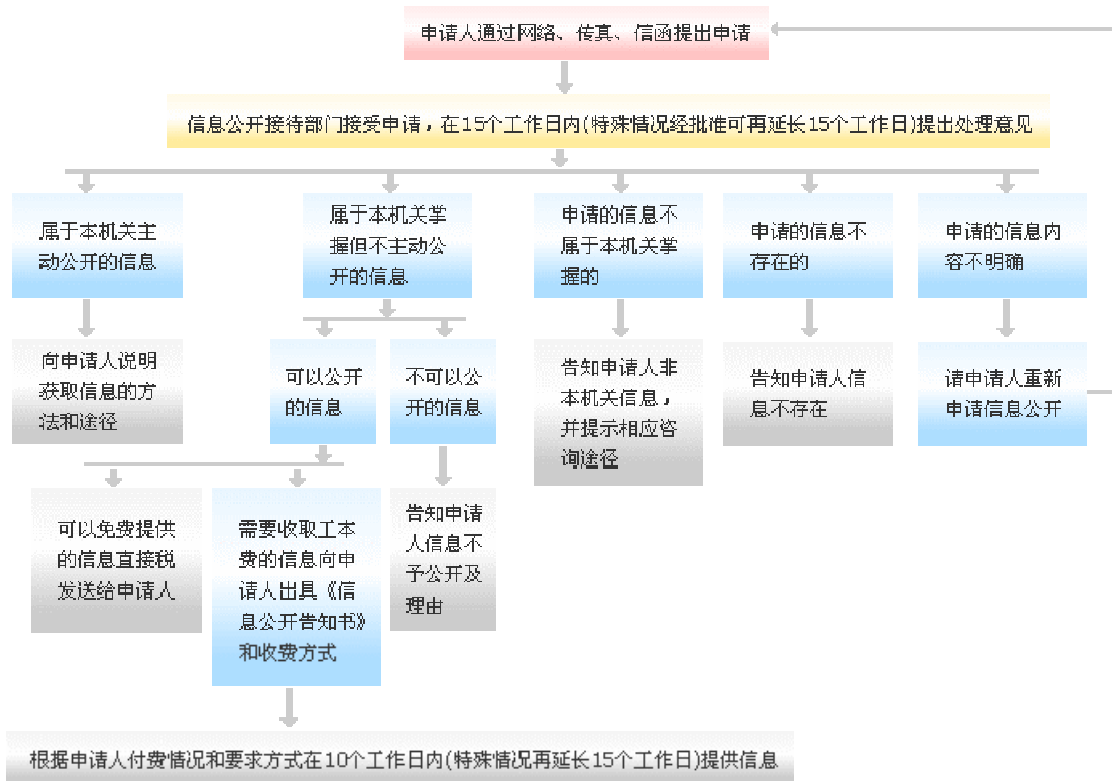
'own initiative' as well as information that will remain closed. It does not mention the right to request information, although accompanying news articles do (Xuexi shibao 2007). In addition to information on government web portals, local governments can also promote open government through broadcasting (Guangzhou Municipal Government Legal Affairs Office 2006 15).

But public awareness is not sufficient, citizens will demand government information when it is of some value to them. Peerenboom suggests that effective citizen-side monitoring of government requires "organized public interest groups and freedom of information, press, and association, none of which exists in China." (Peerenboom 2002 430). The work of the Institute of Public and Environmental Affairs suggests that this is emerging. But unless government information can be used by citizens and organizations to defend rights and effect change, citizens will have few incentives to engage in the process. Even if the regulations are flawlessly implemented on the supply side of government, there cannot be information flow without corresponding citizen demand.



<http://2007.changchun.gov.cn/2007/dzzw/zw/gk/detail.jsp?ID=32700000000000000000>

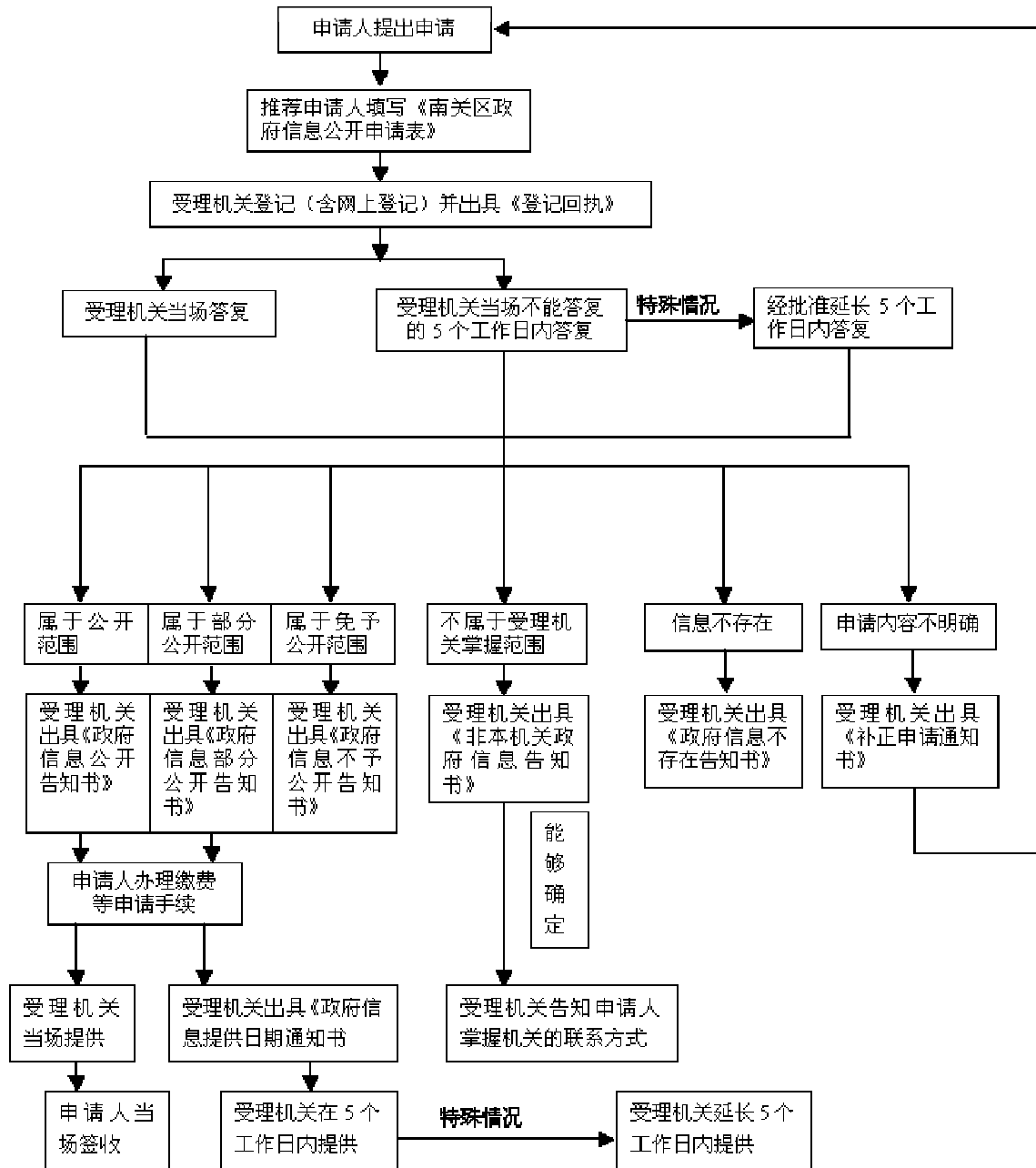
1



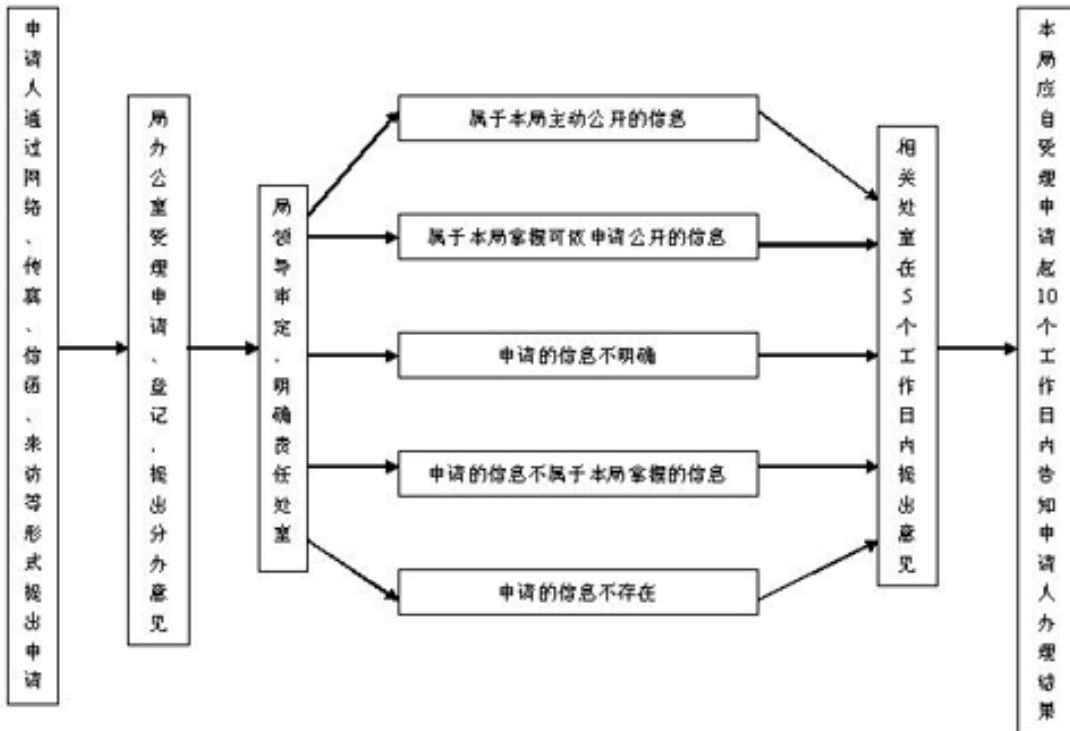
www.xinyu.gov.cn/html/publish03.htm

长春市南关区文化 体育局政府信息公开流程

http://bm.ccng.gov.cn/zhengfu/wenhua/ju/027/new_page_4.htm



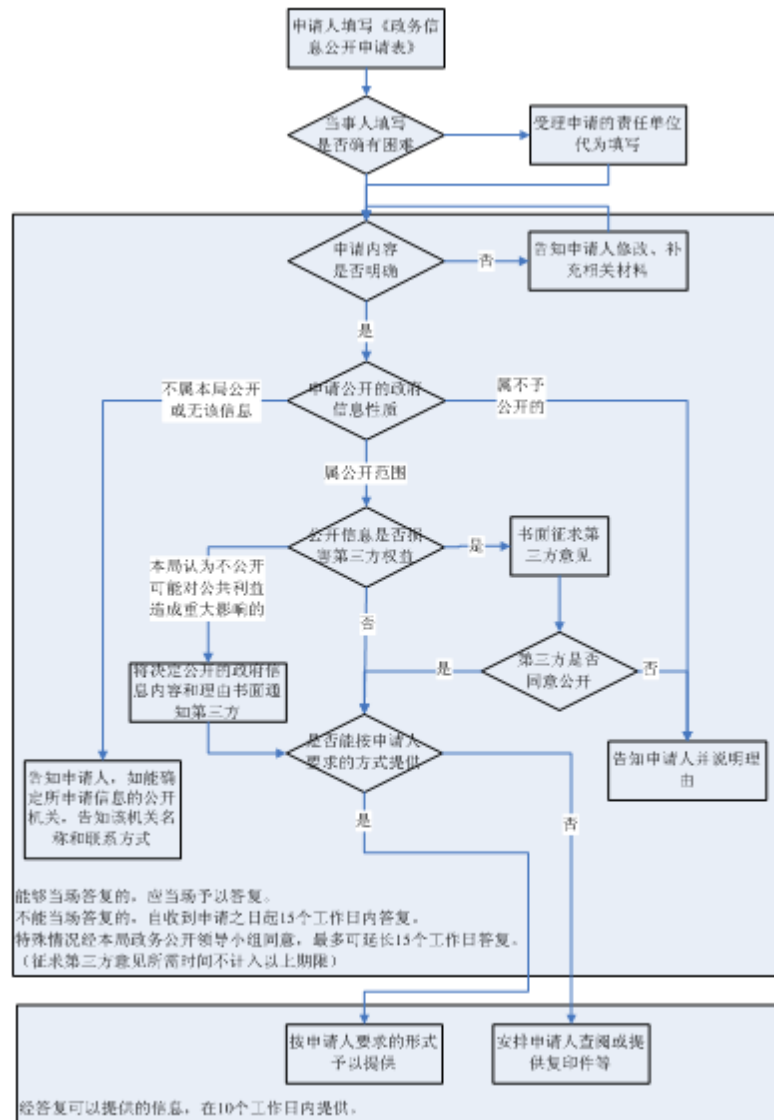
Appendix A4 - Hubei Province, Enshi Autonomous Prefecture, Bureau of Statistics, Open Information Guide



<http://www.esz.gov.cn/Html/zwgk/155347154.shtml>

Appendix A5 - Xiamen Municipality Construction and Supervision Agency Open Government Information Guide

厦门市建设与管理局政府信息公开申请办理流程图



(9 October 2007)

http://www.xm.gov.cn/zwgk/zfxxgkml/jsglj/200710/t20071009_187930.htm

Bibliography

Academic A Interview with Chinese Academic, Beijing.

Academic B Interview with Chinese Academic, Beijing.

Academic C Interview with Chinese Academic, Beijing.

Carter, M. & Lv, Y. 2007, *Access to Government Information in Europe and China: What Lessons to be Learned?*, EU-China Information Society Project.

Hubbard, P (2008) *China's Regulations on Open Government Information: Challenges of Nationwide Policy Implementation*. *Open Government: a journal on Freedom of Information*. Volume 4 Issue 1. Published on 11 April 2008

[China Youth Daily 2007, 4000 duo qiye bei minjianzuzhi shoulu jin zhongguo kongqi wuran ditu Zhongguo qingnian bao \(More than 4000 enterprises included in NGO's China Air pollution Map\).](#)

[Chinese Communist Party Central Committee Discipline Inspection Commission, General Office 2007, Guanyu yinfa Gan Yisheng tongzhi zai 'zhengfu xinxi gongkai tiaoli' chaunti peixun dianshidianhuahuishang de jianghua he Yang Xueshan tongzhi baogao de tongzhi \(Notification concerning Comrade Gan Yisheng's speech on "Open Government Information Regulations" from special topic training videoconference and Comrade Yang Xueshan recommendation report Document 92 of 2007, \(中纪办〔2007〕92号\).](#)

[Guangzhou Municipal Government Legal Affairs Office 2006, "Introduction to open government information work by the Guangzhou municipal government", Government Information Quarterly, vol. 23, no. 1, pp. 11-17.](#)

[Hainan Province 2007, 26 July 2007-last update, "Zhonghua renmin gongheguo zhengfu xinxi gongkai tiaoli" 2008 nian 5 yue 1 ri qi shixing \("People's Republic of China Regulations on Open Government Information" to come into effect from 1 May 2008\). Available: <http://www.hainan.gov.cn/data/news/2007/07/35201/>.](#)

[He, B. 2004, "SARS and Freedom of the Press: Has the Chinese Government Learnt a Lesson?" in The SARS Epidemic: Challenges to China's Crisis Management, eds. J. Wong & Y. Zheng, World Scientific, Singapore ; River Edge, NJ, pp. 226.](#)

[Heilongjiang Province, Open Government Affairs Office 2007, "Zhengwu Gongkai Gongzuo Jianbao \(Open Government Affairs Work Presentation\)", , no. 14\(64\).](#)

[Horsley, J. 2007, 9 May 2007-last update, China Adopts First Nationwide Open Government Information Regulations \[Homepage of freedominfo.org\], \[Online\] \[2007, November 21\] .](#)

[Horsley, J. "Access to Government Information in the People's Republic of China", The Bowker Annual Library and Book Trade Almanac 2006, .](#)

[Hubbard, P. 2005, "Freedom of Information and Security Intelligence: An economic analysis in an Australian Context", Open Government Journal, vol. 1, no. 3.](#)

[Liu, F. 2006, Zuangxing zhongguo de xingzheng gongkai \(Freedom of Administrative Information in Reforming China\), People's University Press, China.](#)

[Ma, L., Chung, J. & Thorson, S. 2005, "E-government in China: Bringing economic development through administrative reform", *Government Information Quarterly*, vol. 22, no. 1, pp. 20-37.](#)

[Madison, J. & Padover, S.K. 1953, *The complete Madison : his basic writings*, 1st edn, Harper, New York.](#)

[McMillan, J. 2002, *Twenty Years of Open Government: What Have We Learnt?* Federation Press, in association with the Centre for International and Public Law, Faculty of Law, Australian National University.](#)

[O'Brien, K.J. & Li, L. 1999, "Selective Policy Implementation in Rural China", *Comparative Politics*, vol. 31, no. 2, pp. 167-186.](#)

[Peerenboom, R.P. 2002, *China's long march toward rule of law*, Cambridge University Press, Cambridge, UK ; New York.](#)

[People's Republic of China, Inner Mongolia Autonomous Region, General Office 2007, *Neimenggu zizhiqu renmin zhengfu bangongting zhuanfa guowuyuan bangongting guanyu zuohao shixing 'Zhonghua renmin gonghe guo zhengfu xinxi gongkai tiaoli' zhunbei gongzuo de tongzhi* \(*The People's government of Inner Mongolia Autonomous Region General Office transmitting the State Council General Office work preparation notice concerning the implementation of the 'People's Republic of China Regulations on Open Government Information*\) Document 99 of 2007 \(内政办发〔2007〕99号\).](#)

[People's Republic of China, Jiangsu Province, Zhenjiang Municipality, Office of Legal Education 2007, 2007 Issue 6-last update, *Zhenjiang pufa wang* \(*Zhenjiang Popular Law Website*\). Available: <http://www.zjfw.gov.cn/wz.asp?id=3297> \[2007, 12/29\].](#)

[People's Republic of China, Sichuan Province, General Office 2007, *Sichuansheng renmin zhengfu bangongting guanyu quanmian luoshi 'zhonghua renmin gongheguo zhengfu xinxi gongkai tiaoli' de shizhi yijian* \(*People's Government of Sichuan Province General Office, Implementation Suggestions concerning the comprehensive implementation of the 'People's Republic of China Regulations on Open Government Information*\) Document 241 of 2007 \(川办函〔2007〕241号\).](#)

[People's Republic of China, State Council 2007, *Regulations of the People's Republic of China on Open Government Information*, The China Law Center, Yale Law School.](#)

[People's Republic of China, State Council, General Office 2007a, 18 September 2007-last update, *Sichuan kaizhan Zhengfu Xinxi Gongkai Tiaoli shixing zhunbei gongzuo zhuo you chengxiao* \(*Sichuan preparation work for the implementation of Open Government Information Regulations has*](#)

[outstanding results](http://www.gov.cn/jrzq/2007-09/18/content_753799.htm)). Available: http://www.gov.cn/jrzq/2007-09/18/content_753799.htm [2007, 12/26] .

[People's Republic of China, State Council, General Office 2007b, Translation of Yale Law School China Law Center - Notice of the General Office of the State Council on Preparing Well for Implementing Regulations of the People's Republic of China on Open Government Information Guobanfa \(2007\) No. 54, August 2007, translation of State Council General Office, Guowuyuan Bangongting guanyu zuohao shixing 'Zhonghua Renmin Gongheguo Zhengfu Xinxigongkai Tiaoli' Zhunbei Gongzuo de Tongzhi, Document 54 of 2007 \(国办发〔2007〕54号\).](#)

[People's Republic of China, State Environmental Protection Agency 2007, Guojia huanjing baohu zongju ling di 35 hao \(State Environmental Protection Agency Decree Number 35\).](#)

[People's Republic of China, State Grain Administration, General Office 2007, Guojia lianshiju bangongshi guanyu zuzhi xuexi "Zhonghua renmin gongheguo zhengfu xinxigongkai tiaoli" zuohao 2007 nian zhengwu gongkai gongzuo de tongzhi, Document 109 of 2007 \(国粮办发〔2007〕109号\).](#)

[Pye, L.W. 1992, The spirit of Chinese politics, New edn, Harvard University Press, Cambridge, Mass.](#)

[Roberts, A. 2002, "Administrative Discretion and the Access to Information Act: An "Internal Law" on Open Government?", Canadian Public Administration, vol. 45, no. 2, pp. 175.](#)

[Roberts, A. 2006, Blacked out : government secrecy in the information age, Cambridge University Press, Cambridge ; New York.](#)

[Saich, T. 2001, Governance and politics of China, Palgrave, Houndmills, Basingstoke, Hampshire ; New York.](#)

[Sichuan Province 2007, 10 October 2007-last update, Sichuansheng zhengfu xinxigongkai changjianwenti jieda yi \(Sichuan Province Open Government Information Frequently Asked Questions - One\). Available: http://www.sc.gov.cn/zt_sczt/xxgkzt/wtjd/200710/t20071010_209435.shtml.](#)

[Snell, R. 2001, "Freedom Of Information : The Experience Of The Australian States - An Epiphany?", Federal Law Review, vol. 15.](#)

[Snell, R. "Using Comparative Studies to Improve Freedom of Information Analysis. Insights from Australia, Canada and New Zealand", 6th National and 2nd International Congress on the Right to Information.](#)

- State Council, Office of Legislative Affairs 2007, *Notice on Positively Participating in the Training Organized by the State Council Office of Legislative Affairs on the Regulations on Open Government Information*. Available: <http://www.hnfbz.gov.cn/Notice.aspx?nid=50>.
- State Grain Administration, *Brief Introduction to the State Grain Administration*. Available: <http://www.chinagrains.gov.cn/d2eindex.html>.
- Stiglitz, J. 2002, "Transparency in Government" in *The right to tell : the role of mass media in economic development*, ed. R. Islam, World Bank, Washington, D.C., pp. 322.
- Sutton, G. & Holsen, S. 2006, "China progresses information access and data protection laws", *Open Government: a journal on Freedom of Information*, vol. 2, no. 2, pp. 51.
- Terrill, G. 2000, "Individualism and freedom of information legislation", *Freedom of Information Review*, vol. 87, pp. 30.
- Ting Gong 2006, "New Trends in China's Corruption: Change amid Continuity" in *China's deep reform : Domestic politics in transition*, eds. L. Dittmer & G. Liu, Rowman & Littlefield Publishers, Inc., Lanham, Md., pp. 451.
- Wei, B. 2007, *Personal email communication*.
- World Trade Organization 2001, *Accession of the People's Republic of China*, (WT/L/432).
- Xuexi shibao 2007, "*Zhengfu xinxi gongkai tiaoli*" de shidai jiazhi (*The value today of "Open Government Information Regulations"*).
- Zheng, Y. & Lye, L.F. 2004, "SARS and China's Political System" in , ed. John Wong, Zheng Yongnian, World Scientific, Singapore ; River Edge, NJ, pp. 226.

-
- i An English translation by the China Law Center of Yale Law School of the Regulations is available at http://www.law.yale.edu/documents/pdf/Intellectual_Life/Ch_OGI_Regualtions_Eng_Final_051607.pdf
- ii The word 'etc' does not appear in the China Law Center's English translation of the regulations, but appears as the character *deng* (等) in the Chinese version.
- iii As an attachment to Shandong Province, Qingdao Municipality General Office Document 26 of 2007 (青政办发〔2007〕26号) 29 July 2007; Shandong Province, Qingdao Municipality, Chengyang District General Office Document 55 of 2007 (城政办发〔2007〕55号), 29 August 2007; Shandong Province, Qingdao Municipality, Sifang District General Office Document 48 of 2007 (青四政办发〔2007〕48号), 6 November 2007; Sichuan Province, Qingshen District, 12 October 2007 (http://www.scqs.gov.cn/Article/Gkgd/200712/749_2.html); Hunan Province, Hengyang Political General Office Document 168 of 2007 (衡政办函〔2007〕168号), 16 November 2007;
- iv *gongzhong yu huanjing yanjiu zhongxin*

*** Biography**

Paul Hubbard is an Australian who first studied freedom of information law under Mr Rick Snell at the University of Tasmania, while completing dual degrees in Arts (Chinese) and Law. He was employed as a policy analyst at the Treasury Department in Canberra, before taking up a Fulbright Postgraduate Award to study for a Master of Arts in International Relations at the Maxwell School of Citizenship and Public Affairs, Syracuse University. This paper was researched and written under the supervision of Professor Alasdair Roberts as part of that degree.