

The Growth and Limits of the DGI/ATI Regulations in China

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I. The Evolution of the Regulation(s)

1. Local experiences since 2002. By the year of 2006, 1/3 of the provinces have passed an ATI regulation. Most of them follow the American FOIA model.
2. In April 2007, the State Council passed the National Regulation (the Regulations on Disclosure of Government Information). It has 38 articles, which provides the obligation of the government to make public government information on its own initiative and upon requests of the individuals and organizations.
3. The Prime Minister Wen Jiabao called it a “A self-revolution” of the Government.

The aims of the ATI Regulation are to: (1) Reallocate public information resource; (2) Create a Rule-based Government (Government under Rule of Law).



Map: 2008 ATI Survey in China



II. Discussions Before and After the Promulgation of the Regulation(s)

1. Right or Obligation?
2. Responsible Government Agencies: Commissioner, Commissioners, or Agencies?
3. Requesters: Any person or Qualified Person?
4. Information Exempted: 3 exemptions or 3 Plus?



III. Impacts and Limits of the Enforcement

- 1. Agencies have better awareness of transparency values.
- 2. In some cases, the requests resulted in new Government decisions. For example, environmental NGO's request successfully obstructed a company's listing in 2008. A request for information regarding compensation arrangement in Beijing led to pending of land taking. In Shanghai and Xiamen, major projects were cancelled because of the information disclosure requests: In Shanghai, it was the mega-train project; In Xiamen, it was the PX project.
- 3. In some other cases, even though the agencies may not have responded in a proper way, they improve the practice over time, especially after dealing with disputes or loss of litigation.
- 4. However, many requesters failed to obtain information they requested. And the proportion is noteworthy.



Table 1. The Fact Sheet of Enforcement for the first 2 months

From May 1 to July 8 2008, over 50% of the 413 requests were rejected under various reasons besides the exemptions provided by the Regulation	Numbers of requests	Proportion of Requests
Exemptions	15	6 . 47%
Info not exist	50	21 . 55%
Info not obtained	59	25.43%
Requests unclear	6	2 . 59%
In total	130	56.04%

Table 2. Unsuccessful Requests in a Major City for the past 5 months

From May 1 to October 20 2008, over 50% of the 1041 requests were rejected under various reasons besides the exemptions provided by the Regulation	Numbers of requests	Proportion of Requests
Exemptions	206	20%
Info not exist	224	22%
Info not obtained	118	11%
Requests unclear	34	3%
In total	582	56%

Table 3. Unsuccessful/Rejected Requests in Shanghai from 2004 - 7

	2004	2005	2006	2007
Info not referred by the Reg.				44 , 2.7%
Info not exist	380 , 28.6%	525 , 20.5%	451 , 32.1%	490 , 30.5%
Info not obtained	471 , 35.4%	916 , 35.7%	420 , 29.9%	539 , 33.5%
Request unclear	119 , 9.0%	254 , 9.9%	259 , 18.5%	255 , 15.8%
Exemptions	87 , 6.5%	639 , 23.6%	188 , 13.4%	179 , 11.1%
Other reasons	273 , 20.5%	230 , 9.0%	85 , 6.1%	103 , 6.4%
In Total	1330	2564	1403	1610

IV. Analysis of the Limits: 4 Ms

1. Misunderstanding: (1) Proactively Disclosed information and Requested Disclosed Information are taken as 2 categories of Information. (2) Misconception of trade secret and privacy.
2. Misguiding: (1) DGI is provided as a government obligation, and failure of obligation does not automatically entitle the requester any relief. So the agencies are more concerned of the reaction of the higher authority other than the need of the requesters. (2), the General Office of the State Council also tends to interpret the Regulation in a reserved way.



3. Misconducts: (1) Expanding the exemptions to categories like historically sensitive information, internal information, information in the progress, etc. (2) Taking the advantage of the executive to impact the courts and press media.
4. Misfortune: (1) Some same level regulations provide space for the maneuvers. For example, the Archive Law has been an excuse for the agencies to avoid applying the Regulation. (2) Under the current regime, both the mass media and NGOs are affiliated with the government. The government can easily suppress the city society if needed. (3) The Judiciary is also weak and has not play a major in shaping the AIT system.



Conclusion

For China, becoming transparent should be taken as a long-term evolution. The current Regulation is just one revolutionary step in the process. To complete the evolution, social and political transformations are requisite. But their relationship might be mutual, because we are also hoping that transparency will play a role in the political and social transition.

