CHINESE FREEDOM OF INFORMATION: AN EVALUATION OF THE LEGISLATIVE HISTORY, RATIONALES, SIGNIFICANCE AND EFFICACY OF REGULATIONS OF THE PEOPLE’S REPUBLIC OF CHINA ON OPEN GOVERNMENT INFORMATION

A Dissertation in
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by
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ABSTRACT

The year 2012 marks the fifth anniversary of the enactment of China’s first national freedom of information law—Regulations of the People’s Republic of China on Open Government Information (OGI Regulations). The law compels Chinese administrative agencies at various levels to publicly and proactively disseminate certain categories of government-held records and documents. The statute also grants Chinese citizens an unprecedented legal right of access to government information. Under the law, any Chinese citizen, legal person and other organization could ask government agencies to disclose records, reports and other official documents that are not exempt. If the requests are not granted, requesters could apply for administrative reconsideration or sue relevant government agencies for judicial-authorized disclosure.

This dissertation assesses and critiques the legal right of access to government-held information in China with a special focus on legislative history, rationales, significance and efficacy of OGI Regulations. The dissertation employs legal research and many other research methodologies such as qualitative historical research, political economic research, firsthand experiences with the use of OGI Regulations, and personal interviews, via emails and telephone, with Chinese legal scholars, lawyers, journalists and government officials. Building upon large volumes of primary and secondary sources, the dissertation traces the historical development of over 4000 years of governmental secrecy and transparency in China. The project examines the gradual and incremental legislative movement toward the final passage of Chinese OGI Regulations in 2007, analyses the statutory language of OGI Regulations, comparing the law with international best practices and other relevant Chinese legal documents, and examines implementation of OGI Regulations in terms of both proactive and reactive disclosure of governmental information. The dissertation examines two types of secretive documents that are exempt from the disclosure requirements of OGI Regulations: internal working documents and journalistic internal reference. The project also explores the relationship between the FOI law and Chinese news media.

The study has found that hundred schools of thought (e.g., Confucianism, Mohism, Legalism, Taoism), flourishing during the Zhou Dynasty, influenced imperial, modern and even contemporary Chinese leaders in terms of their crafting particular policies toward dissemination of official information. As the two of the most influential ancient Chinese philosophies and ruling ideologies, Confucianism and Legalism were known for suppressing free flow of information. However, pre-modern mass media (e.g., palace gates, court gazettes, short reports) still played a significant role in publicizing official information inside and outside of the bureaucracy in ancient China.

Consistent with many other research findings, this dissertation has found that the entire OGI legislative process in China was elite-driven and policy-driven, although the movement toward greater government transparency in China began in the early 1980s in rural areas
and slowly expanded to higher levels of government. The movement culminated in the 2000s when Jintao Hu and Jiabao Wen carried on the torch of transparency and formulated the country’s first freedom of information law, thus marking the fourth peak period of Chinese official transparency (the first three are the Zhou Dynasty, the Tang and Song dynasties, the Republic of China period).

This dissertation identifies some major external and internal factors that contributed to the enactment of FOI law: China’s entry into the World Trade Organization and pressure from the United States; top political leaders’ unswerving commitment to openness and transparency; administrative law reform; the improved capacity for government to distribute information; the changed social and informational environments in the early 2000s; reduced political sensitivity of OGI reform made possible by law reformers who reinterpreted Marxism and modified the Western concept of the right to know, and framed the proposed FOI law as a tool for promoting economic growth and social stability rather than as a vehicle for freedom of expression.

This research project has found that China has embraced many international best practices in statutory language of its FOI law and even go beyond international standards in some regards, at the same time, the country tends to be conservative in many key aspects of the law. Overall, the FOI law is strongly proactive for disclosure but generally weak regarding information disclosure upon request thanks to the legislation’s poorly drafted exemptions. The half-heartedness of the government in accepting international best practices reflects the gradual and incremental nature of China’s political reform.

The dissertation has found that, overall, the Chinese government has been successful in establishing the foundational FOI platforms and forceful in enforcing proactive disclosure requirements under OGI Regulations. This remarkable and surprising achievement shows viability of a FOI system in an authoritarian regime. This research project also identifies some significant problems in the enforcement of OGI Regulations, such as ineffectiveness of administrative reconsideration and judicial review for rectifying non-compliance with OGI Regulations, widespread use of non-statutory or non-legal reasons for denials of information requests, lack of disclosure of governmental information held by military and national security agencies (e.g., the Ministry of National Defense and the Ministry of State Security).

This dissertation has also found that Chinese laws regulating two special kinds of government documents (journalistic internal reference and internal working documents) are problematic. OGI Regulations have no provisions for whether or not internal working documents or journalistic internal reference should be exempt. Chinese administrations have used internal working documents as shields for disclosing information. Agencies may use journalistic internal reference as a reason to deny disclosure in the near future.

The research has found that, unlike many foreign journalists who have played pivotal roles for proposing, formulating, and using freedom of information laws, Chinese journalists had no involvement in recommending and formulating OGI Regulations. More importantly, Chinese journalists have not systemically and vigorously used OGI Regulations to obtain
official information for news reporting purpose. One reason, among many others, for Chinese journalists’ limited use of the FOI law is the lack of strong legal protections for press freedom.

The dissertation presents a series of legal and policy remedies for Chinese law reformers to consider. Recommendations include but are not limited to: revise OGI Regulations to reflect more international best practices; formulate OGI Law to enhance legal status of FOI legislation; amend Constitution 1982 and explicitly enshrine the key phrase “the right to know” in the amended document as a foundational constitutional principle; amend existing laws relating to FOI to make sure that disclosure takes precedence; subject the party, the people’s congress, the courts, the procuratorate, and the political consultative conference and other branches of government to information disclosure requirements; expand the people’s right to know by developing a set of OGI-related transparency laws to ensure sufficient access of the public and news media to governmental meetings and facilities.

A Note on Style

This dissertation is based on Bluebook system of citation because of the general writing inspired by Bluebook, the quantity and detail level of footnotes in the main text, also because of the fact that Bluebook is a widely used legal citation system for legal research. However, Bluebook style is cumbersome for a lengthy English-language dissertation that contains large volumes of Chinese-language materials (e.g., party directives, government reports, statutes, newspapers, journals, books). Hence it is necessary, without harming quality and integrity of the research, to make some modifications to make citation more appropriate and reader-friendly for work of this size and nature.

Bluebook style is used in this dissertation for the text. However, all statutes in the text are italicized, no matter they are Chinese or foreign. All the footnotes adopt Bluebook style with the following modifications: No signals such as see, see generally, see, e.g., are used. No internal cross-references and short form citations such as Id, Supra, Infra and hereinafter are used. Names of journals and other periodicals are not abbreviated. All statutes, both Chinese and foreign, are italicized. Page/section numbers for newspaper and magazine articles and their corresponding hyperlinks are provided to the extent possible. URLs are provided for all the sources cited from the Internet. Working papers, conference papers, other nonperiodic materials (except reports, dissertations and theses), and website materials do not follow Bluebook style.

Chicago style is used for the bibliography. However, no page ranges of journal articles are provided, instead, only starting pages are used. Short form citations are not used. Issue numbers of journal articles are provided to the extent possible. Section letters or numbers for newspaper articles are used whenever they could be found. URLs and corresponding access dates are provided to all cited newspaper and electronic media sources.
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Chapter One: Freedom of Information with Chinese Characteristics

Introduction

In the summer of 2007, a prestigious Taiwanese businessman planned to build a chemical plant in the city of Xiamen, Fujian, a prosperous coastal province in southeast China. Government authorities approved the plan, but construction was blocked by residents of the city, who feared that the plant would pollute the local environment. The incident was unusual in the country because it was the first occasion local residents used cellular text messages and social media to mobilize the public by urging neighbors to “go out for a walk” (a Chinese euphemism for holding a peaceful demonstration) in front of the Xiamen City Hall. In January 2009, China’s Ministry of Environmental Protection decided to move the controversial factory to Zhangzhou, a neighboring city.

Yongtong Su is a reporter from Southern Weekend, “China's most influential liberal newspaper,”4 headquartered in the prosperous city of Guangzhou. On February 2, 2009, Su

1. Chinese City after Freezes Plans for Chemical Plant Barrage of Complaints, THE NEW YORK TIMES


submitted a written request to the Ministry of Environmental Protection citing the nation’s two-year-old freedom of information (FOI) law, *Regulations of the People’s Republic of China on Open Government Information (OGI Regulations)*. Su asked the agency to release the environmental impact assessment that approved construction of the plant in Zhangzhou. Sixteen days later, the journalist received a copy of the report from the agency. Su’s request was the 57th OGI request the Ministry of Environmental Protection received since the enactment of *OGI Regulations*.

Such government transparency was revolutionary in the People’s Republic of China (PRC) until enactment, on April 5, 2007, of the country’s first nationwide freedom of information law. The law, promulgated by the State Council, China’s national cabinet, has granted the Chinese public an unprecedented legal right of access to government-held information. Under the law, any Chinese citizen, legal person, or other organization may

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8 Before the national FOI law was adopted, some provinces and cities in China had various forms of FOI provisions allowing limited public access to official records.

legally request governmental agencies’ disclosure of records, reports, and other official
documents, not otherwise exempted.\footnote{FOI laws around the world exclude certain categories of information. Typically, such exemptions include information that pertains to national security, personal privacy, law enforcement, business and trade secrets, and banking and financial records. The number of exemptions varies among the nations. A detailed explanation of Chinese FOI laws’ exemptions and their uses appears in Chapter Six.} Also, under the law, the people’s government and its
departments at various levels are to disclose, proactively and promptly, certain categories
of information without a specific request.

Internationally, the modern legal right of access to government-held information—
specifically records, reports and official documents encompasses the concept of freedom of
information (FOI). FOI, form of governmental transparency, is a Western concept, dating to
1766 when Sweden enacted the world’s first FOI law, the Freedom-of-Press and the Right-

(last visited November 18, 2012). For English translations of OGI Regulation, see
methodology\textsuperscript{12} to examine all the countries with FOI laws reveals that, of the 97 countries adopting various forms of freedom of information laws as of 2012 (see Table 1-1), 87 are democratic.\textsuperscript{13} In other words, 10 authoritarian countries have FOI laws, and include Asian countries of China and Pakistan, African nations of Angola and Zimbabwe, Middle East countries of Yemen and Jordan, and the former Soviet Union’s member states of Russia, Uzbekistan, Azerbaijan and Tajikistan. Among these 10 rare examples of authoritarian transparency, China ranks low, ahead of only Uzbekistan in the overall state protection of political rights and civil liberties (see Table 1-2).

\textsuperscript{12} Freedom House is a Washington, D.C.-based NGO that studies and promotes human rights, political freedom and democracy. Freedom House measures, annually, the quality of democracy or degree of authoritarianism for 194 countries from 1972 to the present. Each country is rated on a seven-point scale for both political rights and civil liberties, with 1 representing the most free and 7 the least free. Based on the scores, Freedom House determines if a country is “Free” (ratings average 1.0 to 2.5), “Partly Free” (3.0 to 5.0), or “Not Free” (5.5 to 7.0). According to Freedom House designations, “Free” countries are liberal democracies. “Partly Free” countries are electoral democracies. “Not Free” countries are non-democratic or authoritarian. \textit{Methodology}, Freedom House, Washington, DC, \texttt{<http://www.freedomhouse.org/report/freedom-world-2012/methodology>} (last visited November 18, 2012).

\textsuperscript{13} Democracy is a controversial term. Freedom House scores quantify a country’s quality of democracy and/or authoritarianism. They ignore the variety of forms democracy may take. Obviously, democratic nations have different structures of government. For example, the United States has an executive branch under the president, a legislative branch under the Congress; the United Kingdom has an executive branch under the prime minister and a legislative branch in the form of Parliament, and the United Kingdom has a monarchy with no law-making powers. Meanwhile, Israel has an executive branch under the prime minister and a president who is little more than a figurehead, and a parliament known as the Knesset. Yet the United States, the United Kingdom and Israel are all considered democracies because they all share certain characteristics, such as freedom of speech, freedom of the press, freedom of assembly, constitutionalism, the rule of law and varying degrees of governmental transparency, among other criteria.
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<td>Bangladesh, Russia</td>
</tr>
<tr>
<td>Year</td>
<td>Country</td>
</tr>
<tr>
<td>------</td>
<td>------------------</td>
</tr>
<tr>
<td>2010</td>
<td>Liberia</td>
</tr>
<tr>
<td></td>
<td>Guinea</td>
</tr>
<tr>
<td></td>
<td>Bermuda</td>
</tr>
<tr>
<td>2011</td>
<td>Brazil</td>
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<td></td>
<td>Malaysia</td>
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<td></td>
<td>Nigeria</td>
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<td></td>
<td>Niger</td>
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<td>Mongolia</td>
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<tr>
<td></td>
<td>Tunisia</td>
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<tr>
<td></td>
<td>El Salvador</td>
</tr>
<tr>
<td>2012</td>
<td>Yemen</td>
</tr>
</tbody>
</table>

Table 1-1: Chronology of FOI laws in the World

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14 Based on the data from international FOI legal scholars such as David Banisar, John M. Ackerman, Irma E. Sandoval-Ballesteros and Roger Vleugels, the current researcher constructed this table. The table was also based on the data provided by some non-profit FOI organizations such as right2info.org and the Open Society Justice Initiative. The table was updated to include all the countries that joined the global freedom of information community from 1766 to 2012. A total number of 97 countries/regions (including The Republic of China at Taiwan) are included in the table. The year in the table refers to when the respective legislative organ or any other relevant branch of the government passed the law or regulation. Countries that have FOI-related laws but no FOI laws are not included in the table. Countries that have constitutional provisions to protect freedom of information but no specific legislations to guarantee this right are not included in the table. David Banisar, Freedom of Information around the World 2006: A Global Survey of Access to Government Information Laws (report for Privacy International, London, July 2006), available at [http://www.freedominfo.org/documents/global_survey2006.pdf](http://www.freedominfo.org/documents/global_survey2006.pdf) (last visited November 18, 2012); John M. Ackerman & Irma E. Sandoval-Ballesteros, The Global Explosion of Freedom of Information Laws, 58 Administrative Law Review 85 (2006); Constitutional Provisions, Laws and Regulations, Right2info.org, [http://right2info.org/laws](http://right2info.org/laws) (last visited November 18, 2012); Freedom of Information, Open Society Foundations, New York, [http://www.soros.org/topics/freedom-information](http://www.soros.org/topics/freedom-information) (last visited November 18, 2012).
<table>
<thead>
<tr>
<th>Country</th>
<th>Political Rights in the Year of 2012</th>
<th>Civil Liberties in the Year of 2012</th>
<th>Freedom Status in the Year of 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Angola</td>
<td>6</td>
<td>5</td>
<td>Not Free</td>
</tr>
<tr>
<td>Azerbaijan</td>
<td>6</td>
<td>5</td>
<td>Not Free</td>
</tr>
<tr>
<td>China</td>
<td>7</td>
<td>6</td>
<td>Not Free</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>6</td>
<td>6</td>
<td>Not Free</td>
</tr>
<tr>
<td>Jordan</td>
<td>6</td>
<td>5</td>
<td>Not Free</td>
</tr>
<tr>
<td>Russia</td>
<td>6</td>
<td>5</td>
<td>Not Free</td>
</tr>
<tr>
<td>Tajikistan</td>
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<tr>
<td>Uzbekistan</td>
<td>7</td>
<td>7</td>
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</tr>
<tr>
<td>Yemen</td>
<td>6</td>
<td>6</td>
<td>Not Free</td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>6</td>
<td>6</td>
<td>Not Free</td>
</tr>
</tbody>
</table>

Table 1-2: Freedom House Scores of the 10 Authoritarian Countries with FOI Laws

China's low Freedom House score is not surprising. The Chinese government, according to other democracy-promoting organizations, has had consistent ratings of the least transparency in the world. For an authoritarian communist regime such as China,

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16 For example, according to Access to Information Index produced by the United Nations, Chinese government is rated among the least transparent in the world. The Information Access Index combines two annual surveys from two non-profit organizations (Transparency international and Freedom House) to measure key democratic components, which contribute to accessing and disseminating governmental information. STEPHEN A. RONAGHAN, BENCHMARKING E-GOVERNMENT: A GLOBAL PERSPECTIVE-ASSESSING THE UN MEMBER STATES (report for United Nations Division for Public Economics and Public Administration, and American Society for Public Administration, New York, May 2002), available at
long closed to the outside world, the passage of *OGI Regulations* and the journey to
governmental transparency have not been smooth or swift.

In the creation and implementation of the pro-democratic *OGI Regulations*, China is
experiencing a profound schism in its deeply rooted historical, political, and social cultures.
Plainly stated, a conflict exists between governmental secrecy and emerging governmental
transparency. On one hand, Chinese citizens increasingly use *OGI Regulations* to access
official records, and agencies at various levels are releasing, affirmatively, increasing
amounts of key information. On the other hand, Chinese authorities continue to restrict,
severely, dissemination of information held by the government despite enactment of the
FOI law. For example, Shanghai, one of the most economically developed cities in China, is
also at the forefront of promoting governmental transparency in the country.\(^{17}\) From 2004,
when Shanghai enacted its first OGI Rule, to 2008, filing of OGI lawsuits reached nearly 400
in this city. Of these 400 OGI lawsuits, only one plaintiff prevailed, 13 plaintiffs withdrew
their lawsuits, and all the other plaintiffs lost their OGI litigations.\(^{18}\)

The possibility of FOI law in an authoritarian regime and the future viability of the
law are among many issues requiring attention and many puzzles need solutions. This

\(^{17}\) The Shanghai municipal people’s government is the first provincial government in China
to adopt a local OGI rule, enacting *Provisions of Shanghai Municipality on Open Government
Information* in January 2004. Shanghai repealed the law in 2008 and enacted a new OGI
rule.

\(^{18}\) Jian Bao, *Shanghai China: 400 OGI Cases Filed Within Four Years* [上海:四年 400 起政府信息
公开“民告官”居全国首位], *People’s Daily*, November 12, 2008,
chapter begins an extended examination of purpose and significance of this research, definition of the study's scope, proposal of several relevant research questions, exploration of methodology, and a summary of the subsequent nine chapters.

**Purpose and Significance**

The major purpose of this study is examination, evaluation of the legal right of public access to government-held information in the People's Republic of China. Specifically, this research focuses on citizens' rights to access official documents gathered, created, and controlled by China's local (i.e., provinces, cities, counties, and towns) and national executive branches of government.

This research has particular significance at this time because the groundbreaking OGI Regulations have reached an opportune period for examination and evaluation. The year 2012, the fifth anniversary of the law's enactment, represents five years, a sufficient length of time, since approval, to assess, meaningfully, the law's efficacy.

This study is further significant for four additional reasons: First, legal scholars, many government and non-government institutions, the United Nations and other international organizations have long recognized freedom of information as an emerging fundamental human right. In 1946, the United Nations General Assembly stated in an early resolution: “Freedom of information is a fundamental human right and ...

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touchstone of all freedoms to which the United Nations is consecrated.”

Freedom from want is one of Four Freedoms articulated by former U.S. President Franklin Roosevelt and inspired the *1948 Universal Declaration of Human Rights*. Freedom from want is not possible until freedom of information is available.

Article 19 of the *1948 Universal Declaration of Human Rights* (UDHR) stated: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to *seek, receive* and impart information and ideas through any media and regardless of frontiers (emphasis added).” Article 19 of the *1966 International Covenant on Civil and

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Political Rights (ICCPR)\textsuperscript{25} guarantees freedom of information in terms very similar to those found at Article 19 of the UDHR.\textsuperscript{26} Many other international organizations and documents, such as Organization of American States, Council of Europe, African Union, the Commonwealth, Inter-American Court of Human Rights, European Court of Human Rights, the 1992 Rio Declaration on Environment and Development and the \textit{UN 1998 Declaration on Human Rights Defenders}, have upheld similar rights to access information.\textsuperscript{27}

Abid Hussain, the UN Special Rapporteur on Freedom of Opinion and Expression, elaborated on freedom of information in his 1995 Report to the UN Commission on Human Rights: "Freedom will be bereft of all effectiveness if the people have no access to information. Access to information is basic to the democratic way of life. The tendency to withhold information from the people at large is therefore to be strongly checked."\textsuperscript{28} The enactment of the Chinese FOI law is a significant advance for China's human rights


\textsuperscript{27} \textit{Freedom of Information: A Comparative Legal Survey} (Toby Mendel ed., 2\textsuperscript{nd} edn, 2008)

protection. A thorough analysis of access to government-held information in China offers valuable lessons and recommendations useful to enhance governmental transparency and promote Chinese human rights.

Second, the evaluation of the Chinese FOI law may provide a mirror for other countries to identify flaws in their own FOI systems. Third, this research is especially timely and relevant since China’s emergence as the world’s second most powerful economic engine. The Chinese government is the largest single producer, collector, consumer, and disseminator of information in China. The government holds 80 percent of all information circulating in the country. The state of transparency of such a large bureaucracy has not only direct and significant political and economic consequences for the Chinese people, but also for the rest of the world. Fourth, an understanding of China’s

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29 Since U.S. FOIA is a model for other countries, some U.S. legal scholars may suppress the value of learning from other countries’ FOI legislation. For example, the theory of legal transplants pays close attention to transplants’ impact on the “recipient” country. However, some scholars argued that academics should avoid ignoring the impact of the legal transplanting process on the “donor” country. According to legal scholar, Frances Foster, legal transplants can “provide a mirror” for donor countries to “see flaws” in their systems and “new directions” for reform. Frances H. Foster, American Trust Law in a Chinese Mirror, 94 Minnesota Law Review 602, 607 (2010).


current tendencies toward greater transparency and the implications of China’s entry into the global community promoting freedom of information are significant. The implications are reflections of a global phenomenon as FOI laws proliferate since the fall of the Soviet Union.32

**Research Scope**

Use of the word “transparency” is wide but rarely well defined. In politics, transparency refers to enabling citizens to gather information of policies and behavior of governments. 33 In economics, the Working Group on Transparency and Accountability of the Group of 22 defined transparency as “a process by which information about existing conditions, decisions and actions is made accessible, visible, and understandable.” 34 In the security field, a United Nations group defined transparency as “involving systematic provision of information on specific aspects of activities in the military field under formal or informal international arrangements.”35


33 For example, there are many references to political transparency in the documents of the European Union, such as the Amsterdam Treaty. The Treaty of Amsterdam, Amsterdam, October 1997, <http://www.eurotreaties.com/amsterdamtreaty.pdf> (last visited November 18, 2012).


For the purpose of this research, a broad definition is most useful. The book *The Right to Know: Transparency for an Open World* provides such a broad definition: transparency refers to “the degree to which information is available to outsiders that enables them to have informed voice in decisions and/or to access the decisions made by insiders.”³⁶

Narrowly speaking, access to official documents, reports and records made or obtained by executive branches of government is commonly “freedom of information” (FOI).³⁷ FOI represents just one major category of governmental transparency; open government has several important components. Besides freedom of information, governmental transparency applies to *meetings and facilities* of governmental agencies. The public's right to attend official meetings falls under the rubric of “sunshine law.”³⁸ In addition, governmental transparency pertains to judicial proceedings and records.³⁹


³⁷ For instance, in the United States, enactment of *U.S. Freedom of Information Act* and similar state FOI laws guarantee the right of the public to access governmental information held by the executive branches of government.

³⁸ For example, in the United States, the federal *Government in the Sunshine Act* and similar state sunshine laws open federal and state governmental meetings and facilities to the public.

³⁹ For instance, in 1980, the U.S. Supreme Court ruled in *Richmond Newspapers v. Virginia* that the public and the press enjoy a constitutional right to attend a criminal trial. In 1986, the U.S. Supreme Court fashioned the *Press-Enterprise* test, extending American people’s access to other judicial proceedings and records. *Richmond Newspapers v. Virginia*, 448 U.S. 555 (1980); *Press-Enterprise v. Riverside Superior Court* 478 U.S. 1 (1986). *Don R. Pember & Clay Calvert, Mass Media Law* 458-459 (2013). However, statutory laws to guarantee judicial transparency are rare. Comparing with the legislative and executive branches of
people also have the right to know the details of activities of legislative organs\textsuperscript{40} and other entities that receive public funding.\textsuperscript{41}

For the purposes of this study, a narrow definition of freedom of information is most useful. In other words, this research only examines transparency practices and FOI legislation for Chinese administrative agencies extending from the State Council to the township level. This scope is reasonable because \textit{OGI Regulations} apply to administrative agencies only. Transparency practices and rules of other five branches of the Chinese government, \textsuperscript{42} such as the party (\textit{dangwu gongkai} 党务公开),\textsuperscript{43} the people's congress (\textit{lifa

\textsuperscript{40} For example, U.S. Congress and state, and local legislatures are not subject to the FOI laws. Nevertheless, the U.S. House of Representatives, the U.S. Senate, and state and local legislatures enacted their own rules, opening a substantial portion of their proceedings and records to public inspection. \textit{Access to Congress}, Citizen Media Law Project, Berkman Center for Internet & Society, Harvard University, <http://www.citmedialaw.org/legal-guide/access-congress> (last visited November 18, 2012).

\textsuperscript{41} For instance, most U.S. state universities, such as the University of Illinois (http://www.foia.uillinois.edu) and the University of Michigan (http://www.vpcomm.umich.edu/foia.html) are subject to FOI laws because they receive public funding and are considered, as a matter of law, as agencies subject to statutes for disclosure of public records.

\textsuperscript{42} Broadly speaking, each level of the Chinese government has six branches: the people’s congress, the party, the people’s government, the political consultative conference, the people’s court and the people’s procuratorate. The six branches may not exist at all the village and township levels. Unlike the U.S. government in which none of the three branches is superior to the other two, the Chinese people’s congress is the highest state organ at various levels of government. However, in practice, the Chinese Communist Party is more powerful than any of the other five.
gongkai 立法公开),\textsuperscript{44} the court (shenpan gongkai 审判公开),\textsuperscript{45} the procuratorate (jianwu gongkai 检务公开)\textsuperscript{46} and the political consultative conference (zhengxie gongkai 政协公

\footnotesize

\textsuperscript{43}China has tentatively experimented with disclosure of party affairs but without adopting any no relevant laws or regulations. For example, in 2010, the General Office of the CPC Central Committee issued an opinion on disclosure of party affairs at the grassroots level. Establishment of the press secretary system exists for various levels of party committees. The party is conducting a nation-wide experiment to guarantee the transparent exercise of power of county-level party committees. The Party School and other party organizations began to accept interview requests from foreign media. \textit{Opinion of the General Office of the Chinese Communist Party Central Committee on Information Disclosure of Grassroots Party Organizations 2010} [关于党的基层组织实行党务公开的意见] Zhongbanfa (2010), No. 29, promulgated on September 15, 2010; Chunyu Hua, \textit{Disclosure of Affairs of Chinese Communist Party Reaches Its Peak, A Confident and Transparent Party Marks Its 90th Founding Anniversary} [中共党务公开掀高潮 以自信透明形象迎建党 90 周年] XINHUA NEWS AGENCY, June 4, 2011, \url{http://news.xinhuanet.com/politics/2011-06/04/c_121492877.htm} (last visited November 18, 2012). Some Chinese scholars argued for greater disclosure of party affairs. For instance, one scholar insisted on greater disclosure of standard information of various levels of party organizations (e.g., party organization functions; party leaders’ biographies and responsibilities; party’s budget and financial accounting; audit of party organizations; use of party membership fees; operation of party-owned assets), and greater disclosure of information of the party’s decision-making processes. Haibing Gu, \textit{There Should Be Disclosure of Party Affairs} [应当有党务信息公开] \textbf{5} JOURNAL OF CULTURAL CRITICISM 76, 76-77 (2007).

\textsuperscript{44}China expended effort toward rendering its people’s congress, at various levels, more transparent and accessible, although without legislating any relevant laws or regulations. For example, leading officials from the Shanghai Municipal People’s Congress Standing Committee participate regularly in online chatting with citizens. On April 27 2012, the live broadcast of a meeting held by the Zhengzhou Municipal People’s Congress Standing Committee aroused media attention because it was the first of its kind. The Zhengzhou People’s Congress decided to formalize and standardize the live broadcast of its meetings. Yan Shi, \textit{Valuable Experiment in Orderly Political Participation} [有序政治参与的有益尝试], \textbf{PEOPLE’S DAILY}, May 12, 2010, \url{http://opinion.people.com.cn/GB/40604/11572921.html} (last visited November 18, 2012); Jinjin Wang, \textit{Zhengzhou Municipal People’s Congress Standing Committee Holds Meeting Live Broadcast by Internet} [市人大常委会会议首开网络直播], \textbf{ZHENGZHOU DAILY}, April 27, 2012, \url{http://zzrb.zynews.com/html/2012-04/27/content_364644.htm} (last visited November 18, 2012).

\textsuperscript{45}China has attempted to establish a transparent, accessible and efficient judiciary. According to the Supreme Court provisions, judicial information for litigation, trials, hearings, documents, and enforcement shall be accessible to the public except rare cases,
are beyond the scope of this research because these five branches are not subject to OGI Regulations. Over the years, the Chinese have practiced opening governmental meetings to the public, along with opening governmental facilities. Likewise, such which involve civil or criminal litigations including state secrets, commercial secrets, and personal privacy, or non-disclosure is a stipulation of other laws and regulations. Notice of the Supreme Court on Printing and Distributing Six Provisions on Transparent Judiciary and Several Provisions on Media Supervision of the Courts [最高人民法院印发《关于司法公开的六项规定》和《关于人民法院接受新闻媒体舆论监督的若干规定》的通知] Fafa (2009), No. 58 (promulgated on December 8, 2009 and effective on December 8, 2009); Several Provisions of The Supreme Court on Vigorously Enforcing the System of Public Trials [最高人民法院关于严格执行公开审判制度的若干规定] Fafa (1999), No.3 (promulgated on March 8, 1999 and effective on March 8, 1999).


Although the political consultative conference is not required by OGI Regulations to disclose information, various levels of political consultative conferences adopted rules for implementation for disclosing information. For example, the political consultative conference in Sinan County, Guizhou Province adopted rules for disclosure of information. The political consultative conference in Xuzhou City, Jiangsu Province formulated OGI Guide to facilitate disclosure of information. Implementation Rules of Disclosure of Information Held by Sinan County Political Consultative Conference 2012 (adopted on May 26, 2012 and promulgated on June 15, 2012); Guide on Disclosure of Information Held by Xuzhou Municipal Political Consultative Conference 2007 (promulgated on July 30, 2007).

Government meetings in China have never been systematically opened to the public. However, the party and the government traditionally allow certain privileged journalists to attend, regularly, key meetings. Leading officials from the Chinese bureaucracy assume that access to high-profile government meetings will inform journalists who can better propagandize the party’s policies. For example, provincial bureau chiefs of Xinhua News Agency and People’s Daily enjoy the privilege of regularly attending meetings held by
transparency practices are beyond the scope of this study because government meetings and facilities are not covered by OGI Regulations. Hong Kong, Taiwan and Macao are parts of Chinese territories. Freedom of information codes, laws, and practices in Hong Kong.\textsuperscript{49}  

Standing committees of provincial party committees. Likewise, editors and publishers of Xinhua News Agency and the People's Daily regularly attended meetings of CPC Politburo before the reform era. For more information about journalistic privileges to attend certain governmental meetings, see History and Development of Xinhua News Agency Heilongjiang Branch [新华通讯社在黑龙江省的分支机构的沿革和发展], XINHUA NEWS AGENCY,  
\texttt{http://www.hlj.xinhuanet.com/hljfs/fsls.html} (last visited November 18, 2012); Weiwei Fei, Citizen-Based Approach Shall Be Adopted to Deal with Well-Being Issues [抓民生，“群众主体是关键”] PEOPLE'S DAILY, March 7, 2012,  
\texttt{http://www.infzm.com/content/52348} (last visited November 18, 2012).

\textsuperscript{49} The Zhongnanhai, once briefly open to the public in the early 1980s, is central headquarters for the Communist Party of China and the State Council. The Great Hall of the People is meeting place of the National People’s Congress, the Chinese parliament and is accessible to visitors during certain hours. In 2012, the Beijing people’s government issued a notice encouraging government agencies, in Beijing, to allow tourists. Some dining halls of central agencies in Beijing are open to residents in nearby communities. These practices of opening government facilities to the public have no standardization or been written into law. Zhiyong Dai, Government Facilities Should Not Be Off-Limits to the Public [政府机关不是高墙深院], SOUTHERN WEEKEND, April 20, 2012,  
\texttt{http://www.infzm.com/content/74411} (last visited November 18, 2012).

\textsuperscript{50} Hong Kong adopted Code on Access to Information. Unlike many FOI legislations in the world, the code is not law nor legislated by the Legislative Council of Hong Kong. Instead, the government of Hong Kong promulgated the code as an internal regulation affording minimal legal status. Code on Access to Information can be found on the Hong Kong government website  
\texttt{http://www.access.gov.hk/en/code.htm} (last visited November 18, 2012). For analysis of legal status of the code, see Angharad Law, Freedom of Information in Hong Kong, University of Hong Kong, Mar 24, 2010,  
Taiwan\textsuperscript{51} and Macao\textsuperscript{52} are beyond the scope of this research, which focuses exclusively on the freedom of information movement in Mainland China because \textit{OGI Regulations} do not have legal authority in the three special areas.\textsuperscript{53}

\textbf{Research Questions}

In order to illuminate all previously mentioned issues, this study seeks to answer four general research questions:

\textit{1. How did China, a country bereft of democratic political institutions and a democratic political culture of open government, adopt the Western concept of freedom of information? In other words, how have international experiences in FOI,}


\textsuperscript{53} According to the \textit{Constitution of the People’s Republic of China}, Macau and Hong Kong have special administrative regional status, which provides constitutional guarantees for implementing the policy of “one country, two systems” and the constitutional basis for enacting \textit{Basic Law of the Macau Special Administrative Region} and \textit{Basic Law of the Hong Kong Special Administrative Region}. The central government of China in Beijing, which controls the foreign affairs and defense of Macau and Hong Kong but otherwise grants the two regions “a high degree of autonomy,” has no direct authority over the two Special Administrative Regions. The status of Taiwan remains controversial. Taiwan declined subjugation to the People’s Republic of China and declined the granting of special administrative region status, similar to that granted Hong Kong and Macao.
and ancient Chinese philosophies and practices of transparency and secrecy influenced contemporary Chinese political leaders who played key roles in the adoption of the FOI law?

This question arises for two reasons: First, freedom of information closely relates to freedom of expression and the press. Liberal and electoral democracies, which protect freedom of expression and the press, easily nurture freedom of information. Consequently, most countries with freedom of information laws are democratic and have, more or less, traditions of access to official records.\(^5\) China is a rare example of authoritarian transparency with a long history of maintaining confidentiality of official documents. In over 4,000 years of Chinese history, keeping official records hidden has been standard practice. An illuminating investigation would be to identify how and why the concept of freedom of information could take root in an authoritarian regime.

Second, the rationale for a country's efforts to move toward freedom of information is an important consideration. Specifically, identifying the political, economic, societal, legal, and cultural forces encouraging creation of the FOI law is a crucial insight. For example, the Scandinavian countries such as Finland and Denmark adopted FOI laws early because of the influence of the Swedish FOI law and the strong liberal tradition in the area. Many new democracies like South Africa and South Korea adopted FOI laws because their political leaders, at the time, had strong commitment to democratic values and determination to

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\(^5\) Among the more than 90 countries that have adopted various forms of freedom of information legislation, only 10 are non-democratic. They are Asian countries of China and Pakistan, the African nations of Angola and Zimbabwe, the Middle East countries of Yemen and Jordan, and the former Soviet Union member states of Russia, Uzbekistan, Azerbaijan, and Tajikistan.
sever ties with the countries’ bitter authoritarian past. Many emerging democracies in Central and Eastern Europe adopted FOI laws due to a desire to join the European Union. In many long-established democracies like Germany, the United Kingdom, and the United States, governmental agencies generally were reluctant to embrace access laws, but journalists, lawyers and legislatures organized campaigns to fight for the creation of such laws. Some developing countries, especially countries from Africa and Asia, joined the global FOI community to build favorable international images and to seek much-needed foreign investment. What prompted the Chinese government to diverge from a long-established, traditional secretive approach to public access to information is the first issue


for this research. Exploration, illumination, and discussion of the research question presented above are the focuses of Chapters Two, Three, Four and Five.

2. How does the statutory language of OGI Regulations align with international best practices? Given the statutory language of OGI Regulations and the history of implementation since 2008, does the Chinese FOI law qualify as effective freedom of information legislation?

China was later than the majority of FOI countries in adopting freedom of information legislation. China has had ample opportunities to borrow reformers’ ideas of valuable aspects of international experiences. London-based FOI organization, Article 19, developed a model FOI law.\(^{59}\) FOI scholar, Toby Mendel, formulated nine principles of ideal FOI laws: maximum disclosure, governments’ obligation to publish proactively, promotion of open government, limited scope for exceptions, timely and fair processes for requests and independent review of any denied request, no excessive costs for access, open meetings, precedence for disclosure (all laws inconsistent with the principle of maximum disclosure require amendment or repeal), and protection for whistleblowers.\(^{60}\) Prominent international FOI expert, David Banisar, identified international trends in development of global freedom of information laws.\(^{61}\) He also thoroughly examined successes and failures of all national FOI laws.\(^{62}\)

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Legal scholar, Martin Halstuk, identified six characteristics of effective freedom of information laws: (1) All records are presumptively open, and disclosure is the standard; (2) exemptions to disclosure must be narrow and clear in the law’s statutory language; (3) any person can request government-held records and documents for any purpose without the requirement of an explanation; (4) independent review, without cost to the requester should be available in those instances when the government rejects an FOI request; (5) an affirmative disclosure requirement, meaning that government agencies must publish on the Internet certain information without request, such as agencies’ organizational plans, regulations, annual reports, statements of agencies’ rules, policies, and instructions for using the FOIA. The rationale for affirmative disclosure is creating a guard against development of an agency’s “secret law”–rules and regulations known to governmental officials but not the public; (6) copying fees for records should be reasonable and not exceeds the actual cost of production. 63

The current research uses the latter six criteria to measure and analyze Chinese freedom of information law. The study also examines whether or not inspiration from


international statutes inspired China. The study considers the reasons for China’s embracing some international standards and rejecting global best FOI practices elsewhere. Based on the data gathered, this investigation considers enforcement of Chinese FOI law since 2008. Thus, Chapters Six and Seven respond to the second set of research questions.

3. **What exemptions apply to Chinese government’s internal working documents and journalistic internal reference materials under OGI Regulations?**

**What is the impact of such exemptions on free flow of information in Chinese society?**

Internal working documents are a complicated subject for freedom of information jurisprudence. Many national FOI laws exempt such documents from disclosure. For example, under *U.S. FOIA*, two kinds of internal working documents have exemptions from disclosure. One is housekeeping practices in Exemption 2 of *U.S. FOIA*, and another is intra-agency and interagency memoranda and letters in Exemption 5 of *U.S. FOIA*.64 Exemption 2 shields from disclosure risk-of-circumvention records and records of internal agencies’ personnel rules and practices, like hiring and firing, work rules and discipline, and compensation and benefits.65 Exemption 5 shields three kinds of information from disclosure: working papers such as studies, reports, memoranda, and other sorts of documents prepared and circulated to assist official personnel’s decisions or policies (the deliberative process privilege); conversations and materials between an agency and its attorneys (client-attorney privilege); communications between the president and key advisors (the executive privilege doctrine or the presidential communications privilege).66


OGI Regulations do not exempt internal working documents from disclosure. This disclosure-friendly move seems indicating China’s willingness to share internal working documents with the public. But in practice, Chinese government agencies have rejected many FOI requests on the ground that the files sought were internal working documents.

The issue on internal working documents is difficult, but a more thorny issue concerns the journalistic internal reference. The internal reference system is the ruling party’s method of controlling free flow of information in China. The system mandates major party news outlets to gather information for leading party and governmental officials. “Internal journalistic documents,” delivered to party and government officials through special circulation channels, publish information of sensitive and controversial issues and events. Officials read those classified documents, daily, to gain appraisal of domestic and international events. Policy decisions are often the result of this reportage, analysis, and recommendations provided by journalists who author internal articles. Leaking internal journalistic documents to the public is a crime, and violators could be prosecuted. A preliminary search of databases revealed that no other countries in the world have similar journalistic internal reference systems.

The existence of “internal journalistic documents” is a serious legal challenge for OGI Regulations because such documents contain large amounts of government-held information, most of which should have disclosure according to Chinese FOI law. Some Chinese bloggers are urging the government to abolish the internal reference system and turn “internal journalistic documents” into public periodicals. The mechanics of how internal working documents and journalistic internal references restrict flow of
information are a topic hardly addressed by legal scholars. The topic is clearly worth exploring, and therefore, illuminating the third set of research questions is the focus of Chapter Eight.

4. What roles have Chinese journalists and news media outlets played in proposing, formulating, and publicizing OGI Regulations? What are the rationales for those roles? To what use have Chinese reporters and editors put FOI law for information access? What are the reasons for limited journalistic use of the law?

OGI Regulations do not apply to the Chinese media specifically, but have great implications for journalists’ abilities to gather information. Access to government information is vital for the news media, as legal scholar, Vincent Blasi argued, without a right of access to governmental information, the press inevitably confronts enormous difficulties uncovering official misconduct. 67 Consequently, unsurprisingly, members of the news media in the United States and many other countries are always strong proponents of freedom of information legislation. For example, American reporters and editors were instrumental in making U.S. FOIA possible. 68 Once establishing legal right of access to government-held information by national FOI laws, American journalists and their colleagues in many other countries were among the first users of the laws. Muckrakers in

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many countries, especially in countries with strong protection for the press, have produced large numbers of news stories based on information obtained from FOI requests.69

The roles played by foreign journalists in proposing, formulating, and using the FOI laws may or may not be similar to Chinese colleagues. Equally, the roles of foreign reporters’ exposing non-compliance of government agencies with the FOI requirements and similar roles by their Chinese counterparts remain cloudy. No easy clarity for these issues exists.

Today’s Chinese mass media is in transition: On one hand, the media remains under the ruling party’s tight control. Conversely, Chinese media is increasingly commercialized.70 Many market-oriented metropolitan publications display aggressive investigative journalism, and such outlets could well advocate formulation of a freedom of information law. Enterprising journalists could advocate and use Chinese freedom of information law for details that may hold governmental officials accountable, and expose irregularities in the enforcement of the law. Concerning reporters from traditional party news outlets, do they aspire to a right of access to government-held information? Do they cover FOI-related scandals and misconduct aggressively? If they use the law to access official documents, is


70 For more detailed discussions of the Chinese news media system after the death of Zedong Mao, see Yuezhi Zhao, Media, Market, and Democracy in China: Between the Party Line and the Bottom Line (1998); Junhao Hong, The Internationalization of Television in China: The Evolution of Ideology, Society and Media since the Reform (1998); Anne-Marie Brady, Marketing Dictatorship: Propaganda and Thought Work in Contemporary China (2008); Changing Media, Changing China (Susan L. Shirk, ed., 2010).
the use similar to their colleagues from market-oriented, metropolitan, media outlets?\textsuperscript{71}

Especially revealing is examination of this fourth set of research questions regarding the role of Chinese news media in freedom of information, and this is the focus of Chapter Nine.

**Research Methodology**

The principal methodology used in this study is legal research. In a commonly accepted definition, legal research involves “each step of a course of action that begins with an analysis of the facts of a problem and concludes with the application and communication of the results of the investigation.”\textsuperscript{72} Legal research usually involves: framing the issue, locating primary sources (cases and statutes), locating secondary sources (law review articles and books), investigating relevant rules of legal and non-legal procedures, and determining the jurisprudential effects.\textsuperscript{73} Legal research in this study includes:

- Examining the statutory language of *OGI Regulations*.
- Examining the statutory language of *U.S. FOIA* and its amendments.
- Reviewing the legislative history of *OGI Regulations* and *U.S. FOIA*.
- Analyzing pertinent OGI requests submitted by Chinese requesters for information held by governmental agencies at various levels.
- Analyzing pertinent OGI administrative reconsideration cases filed by Chinese information requesters for rectifying non-compliance with *OGI Regulations*.

\textsuperscript{71} Little research considers the role of Chinese journalists in the country’s campaign for freedom of information. No scholars have systematically surveyed Chinese journalists on the topic. The study conducts qualitative interviews by email and telephone to examine the familiarity of Chinese journalists with *OGI Regulations*.


• Analyzing pertinent OGI litigations filed by Chinese requesters to rectify non-compliance with *OGI Regulations*.

• Translating and interpreting Chinese-language legal documents, newspapers, magazines, and website articles, administrative reconsideration cases, court cases, and the party’s and the people’s government’s directives on freedom of information.

• Examining Chinese-language official web portals that feature freedom of information content.

• Examining OGI-related governmental transparency laws and practices in China.

• Examining use of open records law and other transparency-related laws, especially in the digital age.

Legal research resources include the HeinOnline database, Lexis-Nexis database, Google Scholar, Westlaw Campus, Westlaw China, *Beida Fabao*, Index to Legal Periodicals, China Academic Journals Database, and the Internet. The research relies heavily on primary sources including party directives, governmental statutes and other legal documents. Also used in the research are secondary source materials, including books, newspaper and magazine articles, legal periodicals, such as law journals and law reviews, mass communication journals, and history and political science journals. In today’s digital world, primary and secondary materials for legal research are easily accessible via well-designed searches of database services. Thus, while expended time and energy identifies needed materials, more time and effort accrues to establishing relevant patterns and insights from the large quantities of available information of Chinese *OGI Regulations* and other relevant laws.
The dissertation complements the legal research with interdisciplinary methods, specifically, qualitative historical research to explore the events and public debates resulting in the legal structure of access to information in China. The study discusses the concept of freedom of information matured in the Western civilization and its transference to China. An examination provides details of the communication policies of the Chinese government evolved in the last four thousand years. In order to identify the true influences on the freedom of information laws, the research focuses primarily on legislative history, complemented by political and sociological history.

Second, aspects of political economic research apply to the research. Commonly, political economic research involves methodology combining political science and economics to explore the qualitative effects of power on the well-being and the depth of knowledge of people. By using political economic research methods, this study examines political and economic causes and effects from governmental transparency and secrecy.

Third, personal interviews with government officials, email and telephone interviews with Chinese legal scholars and lawyers familiar with FOI issues, provide insight for the current research. Telephone and email interviews with editors and reporters from various kinds of media outlets across the country determine Chinese journalists' familiarity

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74 Scholars Charles Busha and Stephen Harter have detailed six steps for conducting historical research. It starts “from the recognition of a historical problem or the identification of a need for certain historical knowledge” and ends with “recording of conclusions in a meaningful narrative.” Charles H. Busha & Stephen P. Harter, Research Methods in Librarianship: Techniques and Interpretations 91 (1980).

with OGI Regulations. The current researcher compiles a dataset from nearly 300 OGI annual work reports (2008-2011) to examine enforcement of OGI Regulations since the 2008 institution of the law. The researcher also visits some Chinese government websites to personally experience the ease of access to official information. When examining the data regarding archives laws, state secrets laws and practices of secrecy and transparency of the Chinese government over the last several thousand years, the current researcher relies upon web-based e-text systems to search among large volumes of ancient Chinese historical classics such as Records of the Grand Historian, Book of Han, Chronicle of Zuo and Lv's Commentaries of History.

Questions asked during interviews with Chinese journalists include 1) “Do you know OGI Regulations?” 2) “Have you ever used OGI Regulations to access governmental documents?” 3) “If no, why?” 4) “If yes, how many times have you applied for information via filing OGI requests since 2008?” 5) “What kind of information are you requesting?” 6) “Are you requesting information as a citizen or as a journalist?” 7) “Have you ever obtained the information sought?” 8) “If yes, how do you usually use the information you obtained?” 9) “If no, have you ever tried administrative and/or judicial remedies?” 10) “Are you aware of any of your colleagues (in your newsroom or other media outlets) who have ever used the law for informational access?” 11) “Can you provide any suggestions, concerns, recommendations you may have for journalistic use of OGI Regulations?”

Chinese historical classics are numerous. The current researcher first examines Chinese-language materials (e.g., newspapers, magazines, journals, online postings) to determine what kind of Chinese historical classics may contain information pertaining to mass communication policies of various Chinese governments. Then the researcher employs key words such as “secrecy” or “transparency” to search among the large volumes of classics. This searching work becomes easier because of the availability of the Chinese Text Project (http://ctext.org/) and some other bilingual web-based e-text systems such as the one on the University of Virginia website (http://www2.iath.virginia.edu/saxon/servlet/SaxonServlet?source=xwomen/texts/listtexts.xml&style=xwomen/xsl/dynaxml.xsl&chunk.id=d1.1&toc.depth=1&toc.id=0&doc.lang=bilingual). The current researcher also searches relevant Chinese texts on the website of guoxue.com (http://www.guoxue.com/), a site where one can search and locate numerous Chinese classics and ancient books.
Although adopting an interdisciplinary approach in research is desirable, this study seeks to emphasize that legal analysis is the principal methodology. All the other methodologies, including historical research, political economic research and interviews are secondary. Overall, the research's discussion is in-depth and lengthy, compared to a law review article in an academic journal, but appears similar to a law review article in structure and content.

**Major Research Contributions**

This research advances public understanding of Chinese freedom of information law, one of the most significant advancements of Chinese government toward greater transparency. This study differs significantly from existing literature, consequently contributing to existing scholarship. The dissertation:

- Explains the influence of the Western concept of freedom of information inculcation in the Chinese authoritarian body politic and culture, which incorporated official secrecy as the norm throughout the nation’s modern history.
- Investigates evolving official transparency and secrecy during China's civilization from the first dynasty to the PRC.
- Provides a detailed and comprehensive account of the legislative history of Chinese *OGI Regulations*.
- Examines, evaluates, and compares the statutory language of *OGI Regulations* and equivalent laws in the United States and other countries.
- Examines and evaluates the enforcement of *OGI Regulations*’ proactive and reactive disclosure requirements by using data compiled from many sources.
• Assesses the Chinese FOI law’s efficacy through an analysis of recent Chinese information requests, administrative reconsideration cases, and court cases.

• Examines the function of internal working documents and journalistic internal reference, as used by agencies and/or judges, to deny disclosure and the effect on people’s legal right of access from these two exemptions that are not components of OGI Regulations.

• Discusses OGI Regulations’ coinciding with the evolving paradigm of the Chinese news media. In other words, the study examines the role of Chinese journalists in formulating, publicizing, and using the law for access to information.

• Uses Freedom House scores that quantify the status of China’s regime and press freedom to scrutinize a comparison of the Chinese government with more than 90 FOI countries.

• Combines legal research with other methodologies such as historiology, political economy, email and telephone interviews, qualitative data analyses, and experimental use of OGI Regulations.

• Proposes recommendations for China’s policy-makers to improve official transparency.

Summary of Dissertation Chapters

The study examines and evaluates the legal right of access to government-held information in the PRC. This research of Chinese freedom of information law includes 10 chapters. Chapter One: Freedom of Information with Chinese Characteristics serves as an introduction and provides an overview of covered topics.
Chapter Two: *Theoretical Applications and Literature Review on Freedom of Information*. This chapter examines all the major theories used in the study. Major theories providing philosophical and legal inspirations for freedom of information legislation are the freedom of expression theory, the right to know theory, the democratic political theory, and the checking value in First Amendment theory. The chapter examines reinterpretations of the right to know theory in the Chinese context. Discussion includes the four theories of the press and democratization theories and a review of existing literature pertaining to Chinese FOI law. All relevant, major, scholarly articles, books, book chapters, conference papers, dissertations and theses and other academic materials focusing on *OGI Regulations* have consideration to identify gaps in the academic literature.

Chapter Three: *Origins and Development of Freedom of Information Laws in the World*. The first freedom of information law emerged in Sweden in 1766. However, modern government transparency laws have roots in *U.S. FOIA* (1966), which inspired approximately 60 other nations’ FOI laws. This chapter traces the origins of the concept of freedom of information, tracks the history and development of FOI laws around the world, identifies patterns and trends that may be reference points for the Chinese version of FOI legislation. This chapter examines the origins and milestones of *U.S. FOIA* in detail, its incomparable influence in the world, and the role of U.S. journalists in the formulation, revision and use of the FOI law. This chapter also discusses how the law has been used as a model by U.S. state legislatures to craft open records laws of their own.

This chapter examines both sides of the Chinese government's informational policies’-secrrecy and transparency-evolution. Dynasties in Chinese history are numerous and the scope of this research does not allow for thorough scrutiny of each dynasty. Thus, focus for review is on the government's informational policies in four major time periods: Pre-Qin China (2070 BC -221 BC), imperial China (221 BC – 1912 AD), the Republic of China (1912-1949), and the People's Republic of China under the leadership of Zedong Mao (1949-1976). The study assesses the influence of ancient schools of thought such as Confucianism and Legalism on interpretation of the value of flow of information between the government and its subjects. The chapter analyzes the inspiration or discouragement of those schools of thought on subsequent rulers’ practicing governmental secrecy.

Chapter Five: Legislative History of OGI Regulations and Rationales for the Rise of Chinese Freedom of Information. This chapter provides an overview of the legislative background of various factors contributing to final passage of OGI Regulations. Chairman Zedong Mao established a comprehensive information control system after assuming office in 1949. When Mao died in 1976 and Xiaoping Deng emerged as the paramount leader of China in 1978, the country began to liberalize its political and economic systems. As a part of efforts to reform and open to the outside world, China began to embrace, gradually, the concept of governmental transparency. This chapter examines three generation of Chinese leaders' (Xiaoping Deng, Zemin Jiang and Jintao Hu) understanding of the value and necessity of governmental transparency and explores OGI Regulations' proposals, drafts, and adoption.

Chapter Six: What the Law Promises: Analysis of Statutory Language of OGI Regulations. This chapter provides an overview of the Chinese FOI law by examining its
statutory language in different categories necessary for freedom of information laws in a transparent government. The major categories covered are legal authority, legislative purpose, types of governmental bodies covered, identity of accessible information; identity of inquirers, fees for access, response time limits, exemptions, appeals and oversight, sanctions, affirmative publication, e-FOI, and whistleblowing.

Chapter Seven: *What the Law Delivers: Implementation of OGI Regulations*. This chapter examines the enforcement of *OGI Regulations* during the last five years (2008-2012) in both proactive disclosure and reactive disclosure. The analysis of strengths and weaknesses of the enforcement of the law has a basis in data compiled from annual OGI work reports. The chapter explores various factors contributing to strengths and problems.

Chapter Eight: *Journalistic Internal Reference and Internal Working Documents: Statutory and Non-Statutory OGI Exemptions*. This chapter examines two kinds of official information exempted, in practice, from disclosure requirements of *OGI Regulations*. One is journalistic internal reference; the other is working secrets or internal working documents. Both exemptions play significant roles in restricting the free flow of information between the Chinese government and citizens.

Chapter Nine: *Journalistic Role in Chinese Freedom of Information*. This chapter examines the Chinese FOI law's compliance with the evolving paradigm of the Chinese news media. In many countries with freedom of information legislation, journalists executed important roles leading the campaign for greater access to government-held information and establishment of legal rights to access. Journalists are among the most active, enthusiastic, and successful users of, and commentators on, freedom of information laws. This chapter explores Chinese journalism’s similar role. In other words, the chapter
attempts to investigate Chinese journalists’ contributions to the drafting, publicizing, and enforcement of *OGI Regulations* and their use of the law to access information needed for news reporting and writing.

Chapter Ten: *Recommendations for Chinese Law Reformers (Conclusion)*. This chapter includes a recapitulation of the research and provides recommendations and suggestions for reformers of Chinese law to consider when revising *OGI Regulations* in the future. Additionally, the final chapter discusses the limitations of the research and areas for future study.
Chapter Two: Theoretical Applications and Literature Review of Freedom of Information

Introduction

This chapter will examine all the major theories that apply to the current research. Major philosophical and legal inspirations for freedom of information legislation are the theories of freedom of expression, right to know, democratic politics, and checking value in the First Amendment. Considerations will also include four theories of the press and democratization. In addition, this chapter will review the existing literature pertaining to the Chinese freedom of information (FOI) law. The chapter will review major scholarly articles, books, book chapters, conference papers, theses, and other academic materials that focus on Chinese OGI Regulations. The discussion will include identification of the gaps in the academic literature.

Theoretical Framework

Freedom of Expression Theory

As the examination in Chapter One demonstrates, freedom of information is a loosely defined term with four interpretations. The first view maintains that freedom of information is the right of access to vital information, and it is a constituent of the right to free expression of opinions. For example, FOI scholar, Roberto Saba, argued that freedom of expression and opinion not only entail individuals' right to disseminate their thoughts to all kinds of people, but also guarantee that users of information have access to all diverging

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views on a specific issue. The United Nations adopted the same approach in preparing its human rights documents. Article 19 of the United Nations Universal Declaration of Human Rights states, “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

The second perspective asserts that freedom of information includes the right to information and freedom of expression. For example, FOI scholar, Ernesto Villanueva, insisted that “Right to Information” includes but goes beyond freedom of expression, and access to information consists of three elements: 1) the right to seek and receive information; 2) the right to inform; 3) the right to be informed. Another FOI scholar, Alasdair Roberts, also argued that information rights are essential constituents of basic rights for political participation, including but extending beyond the right of freedom of expression.

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82 Alasdair Roberts, Structural Pluralism and the Right to Information, 51 University of Toronto Law Journal 262, 243-71 (2001) (noting that access rights are grounded in participation rights in addition to the freedom of expression).
The third view is that freedom of information and freedom of expression relate to each other but are separate civil rights. Neither is a component of the other. For example, FOI scholar, Mark Bovens, argued that, similar to freedom of expression, freedom of information shall be a civic right and all FOI countries should include, in their constitutions, a universal right to information.

The fourth view holds that freedom of information is the protection of freedom of expression on the Internet. Few FOI scholars hold this perspective, but many non-profit public interest organizations interpret freedom of information this way. For example, the Global Internet Freedom Consortium is an alliance of several leading organizations specializing in developing and deploying anti-censorship technologies for Internet users in oppressive regimes. The Consortium states on its website, “There is no freedom without freedom of information. There is no freedom of information without Internet freedom.”

Despite the varying definitions of freedom of information, the intimate intertwining of freedom of information and freedom of expression is difficult to deny. Consequently, examination of the freedom of expression theory, which grounds freedom of information, is desirable.

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The concept of freedom of expression, a universally acknowledged civil right,\(^{86}\) had its origins in ancient Greece and Rome.\(^{87}\) The right to freedom of speech and expression emerged in the era of the European Enlightenment. \(^{88}\) The free speech theory is a result of the primary advocacy and development of three “Johns” (John Milton, John Locke, and John Stuart Mill). John Milton (1608-1674), known for his strong opposition to the British government’s licensing of printers and publishers for censorship, eloquently pleaded for freedom of expression and toleration of falsehood in his 1644 book *Areopagitica*: “Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties.”\(^{89}\) John Locke (1632–1704) followed John Milton in challenging suppression of freedom of speech. Locke argued for religious tolerance and believed that all people were


\(^{88}\) European Enlightenment is a European intellectual movement of the 17th and 18th centuries. Fundamental to the Enlightenment’s philosophies were use and celebration of reason. By using reason, man understands the universe and improves the human condition. Rational humans pursue three major goals in their lives: Knowledge, freedom, and happiness. For more explanations about European Enlightenment, visit Britannica Online Encyclopedia, <http://www.britannica.com/EBchecked/topic/188441/Enlightenment> (last visited November 18, 2012).

equal and independent, and everyone had a natural right to defend personal liberty.\textsuperscript{90} John Stuart Mill (1806–1873) and other subsequent philosophers were more progressive than John Locke by arguing for more universal freedom of speech and toleration. Mill believed no progress would occur in science, law, or politics without free discussion of opinion. He published \textit{On Liberty} in 1859, and it became a classic defense for the right to freedom of expression.\textsuperscript{91} Mill argued that no fear should associate with the free expression of ideas. To the contrary, such expression should receive encouragement without regard even to truthfulness. Truth would excoriate falsehood in the process of allowing the airing of conflicting opinions.\textsuperscript{92} He stated, “We can never be sure that the opinion we are endeavoring to stifle is a false opinion, and if we were sure, stifling it would be an evil still.”\textsuperscript{93}

\textit{The Right to Know Theory, Democratic Political Theory and Checking Value in the First Amendment Theory}

Freedom of expression and speech is a vital civil right; however, without the right of access to information, freedom of speech becomes meaningless. The right to access information determines how, why, and what individuals say about themselves and the world. This rationale led to the development of the right to know theory. According to this theory, individuals enjoy an unalienable right to obtain information, especially information

\textsuperscript{90} Alistair E. McGrath, \textit{Historical Theology: An Introduction to the History of Christian Thought} 214-215 (1998); John Locke, \textit{The Two Treatises of Government} (1824).

\textsuperscript{91} Karen Sanders, \textit{Ethics and Journalism} 66 (2003).

\textsuperscript{92} Karen Sanders, \textit{Ethics and Journalism} 67 (2003).

of powerful institutions such as governmental agencies and important private entities.\textsuperscript{94} Many scholars, such as Leonard Levy,\textsuperscript{95} Daniel Hoffman,\textsuperscript{96} Harold L. Cross,\textsuperscript{97} Herbert Brucker,\textsuperscript{98} Jerome Barron,\textsuperscript{99} Alexander Meiklejohn,\textsuperscript{100} Thomas Emerson\textsuperscript{101} and Anthony Lewis\textsuperscript{102} advocated the right to know philosophies.

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\textsuperscript{94} However, the right to know is not an unfettered right. As scholar Brian Richardson rightfully noted from the perspective of moral philosophy, the press would lose discretion in what to publish if individuals claim that they have an unfettered right to know all information. For example, if newspapers name a rape victim, it would cause unnecessary harm and damage a victim's moral right to privacy. In such case, naming the victim would be unethical despite the public's right to know. Brian Richardson, \textit{The Public's Right to Know: A Dangerous Notion}, 19 \textit{Journal of Mass Media Ethics} 46, 46-55 (2004).


\textsuperscript{97} Harold L. Cross, \textit{The People's Right to Know: Legal Access to Public Records and Proceedings} (1953).

\textsuperscript{98} Herbert Brucker, \textit{Freedom of Information} (1949).


The term “right to know” first appeared in the 1787 speech of James Wilson, one of the Founding Fathers of the United States and a signer of the United States Declaration of Independence.103 Harold L. Cross popularized the term as early as 1936.104 Kent Cooper, then director of the Associated Press, used the term in a 1945 speech.105 With the 1953 publication of the book The People’s Right to Know: Legal Access to Public Records and Proceedings, Harold Cross further improved the popularity of the term. The term “right to know,” initially used by journalists and professionals from media-related sectors, gradually became a popular term for people in general.106 The environmental movement further popularized the term. Rachel Carson, a biologist and influential author of Silent Spring, said, “the obligation to endure gives us the right to know.”107

103 Brian Richardson, The Public’s Right to Know: A Dangerous Notion, 19 JOURNAL OF MASS MEDIA ETHICS 46, 46 (2004). As a delegate to the 1787 Federal Convention, James Wilson stated, “The people have a right to know what their Agents are doing or have done, and it should not be in the option of the Legislature to conceal their proceedings.” Madison Debates, the Avalon Project at Yale Law School, <http://avalon.law.yale.edu/18th_century/debates_811.asp> (last visited November 18, 2012).

104 Kiyul Uhm, The Founders and the Revolutionary Underpinning of the Concept of the Right to Know, 85 JOURNALISM & MASS COMMUNICATION QUARTERLY 393, 405 (2008).

105 Kent Cooper, The Right to Know: An Exposition of the Evils of News Suppression and Propaganda xii-xiii (1956) (claiming credit for coining the phrase “right to know” and defining it as a citizen’s entitlement to “have access to news, fully and accurately presented”).


The right to know theory grounds itself in well-established democratic political philosophies and gains additional legal support from the First Amendment theories. According to democratic political theory, citizens in democracies are masters of themselves; state's power belongs to the people, and the people elect officials to exercise the power on behalf of ordinary citizens. In order to fully participate in self-governance and render informed decisions for political candidates and their legislative responsibility, citizens should have full access to records and files held by the government, which does not retain ownership of those records and files: Governments are the custodians of those documents. The government-held documents belong to the people, who, as owners, naturally enjoy the right of examination. The access right creates an enabling environment for better governance, placing governmental secrecy as a breeding ground for corruption, inefficiency, distrust, and insecurity. A transparent government affords greater accountability because misconduct or transgressions become apparent if government documents and processes are visible for all to see.108

Democratic political theory, originating in Western Europe, is the development of many Enlightenment thinkers such as John Locke, Jean-Jacques Rousseau, and Charles-Louis de Secondat (Montesquieu).109 John Locke argued that people surrender sovereignty to a government in order to receive or maintain social order through the rule of law.


Legitimate state authority must derive from the consent of the governed. "Implicit in this arrangement is the concept of public access to government information, for without such information, consent would be uninformed."\textsuperscript{110} Lock's thought deeply influenced the Framers of the U.S. Constitution.\textsuperscript{111}

Democratic political theory further advanced in 20\textsuperscript{th} century America by renowned philosopher and educator, Alexander Meiklejohn,\textsuperscript{112} whose notability arises from efforts to link freedom of speech with democracy. For Meiklejohn, the free flow of information is vital for democracy, arguing that voters need full access to governmental operations and information in order to render well-informed decisions.\textsuperscript{113} Meiklejohn wrote that

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  \item The basis for Meiklejohn's opinions on freedom of information was a unique absolutist view of freedom of speech as pertaining to political information and self-government. Alexander Meiklejohn, The First Amendment Is an Absolute, 1961 Supreme Court Review 257 (1961).
  \item Alexander Meiklejohn, Free Speech and Its Relation to Self-Government 88 (1948); Alexander Meiklejohn, The First Amendment Is an Absolute, 1961 Supreme Court Review 245 (1961). Meiklejohn's democratic self-rule theory, cited by renowned British media law scholar, Eric Barendt, is "probably the most attractive and certainly the most fashionable
“whatever truth may become available shall be placed at the disposal of all the citizens of the community”\textsuperscript{114} in order for people to become their own governors. He said, “Public discussions of public issues, together with the spreading of information and opinion bearing on those issues, must have a freedom unabridged by our agents. Though they govern us, we, in a deeper sense, govern them. Over our governing, they have no power. Over their governing we have sovereign power.”\textsuperscript{115} Many other legal scholars, philosophers, and commentators have written extensively about the intertwined relationship between public access to information and democracy.\textsuperscript{116}

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  \item free speech theory in modern Western democracies. \textit{Randal Marlin, Propaganda and the Ethics of Persuasion} 226 (2002).
  \item \textit{See Alexander Meiklejohn, Free Speech and Its Relation to Self-Government} (1948).
\end{itemize}
The checking value in the First Amendment theory is the development of legal scholar, Vincent Blasi, who argued that governmental officials have an inherent tendency to abuse their power. Thus, the responsibility accrues to the public to maintain vigilance over people with power. Blasi concluded that, given the complexity and size of modern governments, only an institutionalized media have resources and capacities to check the dangerous and harmful tendency of officials to abuse power.

Blasi identified the value of news media to oversee government’s power to justify the argument that news media deserve special constitutionally protected privileges in newsgathering. Such First Amendment-supported press privileges are still lacking in the United States. Some scholars believed the Founding Fathers of the U.S. Constitution

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119 The *Freedom of Information Act* adopted in 1966 has granted anyone in the world an “enforceable legal right” to inspect documents or records held by the U.S. federal government. HAROLD L. CROSS, *THE PEOPLE’S RIGHT TO KNOW: LEGAL ACCESS TO PUBLIC RECORDS AND PROCEEDINGS* 197 (1953). However, the right is statutory, not constitutional. In the 1970s, the U.S. Supreme Court ruled in a series of related cases known as the “Prison Trio” that no constitutional right of access to governmental facilities including prisons exists. Pell v. Procunier, 417 U.S. 817 (1974); Saxbe v. Washington Post, 417 U.S. 843 (1974); Houchins v. KQED, 438 U.S. 1 (1978). These three cases served as a legal precedent denying the constitutional right of the general public’s access to any kind of public institutions except criminal trials (Richmond Newspapers v. Virginia (1980) granted the public a right of access to criminal trials). In general, the First Amendment protection for newsgathering is poor in the United States. For example, reporters enjoy no special privileges in newsgathering. They may be liable for actions taken as a part of their newsgathering activities. They may be subject to arrest or suit on the grounds of trespass, fraud, and failure to obey lawful orders, or illegal taping and recording. DON. R. PEMBER & CLAY CALVERT, *MASS MEDIA LAW* 327-35 (2013).
intended the public’s limited access, not specifically the press. For example, FOI pioneer Harold Cross argued that the history of free speech and press “bars any notion that the men of 1791 intended to provide for freedom to disseminate such information but to deny freedom to acquire it.” Another prominent legal scholar, David O’Brien, provided a more comprehensive overview of a possible constitutional right to information for both individuals and the press in his seminal book, The Public’s Right to Know. Many other legal scholars and commentators have long argued that the people’s right to information, especially the journalist’s right to gather information, shall have protection under the First Amendment. They contended that although laws grant limited access to information held by federal, state and local agencies in the United States, these laws are subject to change and modification by the U.S. Congress and the state legislatures. One potential

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120 Kiyul Uhm, The Founders and the Revolutionary Underpinning of the Concept of the Right to Know, 85 JOURNALISM & MASS COMMUNICATION QUARTERLY 393, 397 (2008).


solution to this tension between legislative efforts to provide access to information and subsequent legislative efforts to curtail access to that information is to recognize that individuals (e.g., citizens and journalists) have a constitutional right to information.\textsuperscript{124}

More than 20 cases involving individual’s First Amendment rights to information emerged in the United States in the last 70 years, with \textit{Grosjean v. American Press} (1936) being the first and \textit{Board of Education v. Pico} (1982) being the last.\textsuperscript{125} The results are clearly discouraging, “[n]o party had ever even claimed a right to information as within the realm of their individual First Amendment rights.”\textsuperscript{126} \textit{Richmond Newspapers v. Virginia} (1980) is a case in which the Supreme Court explicitly supported a constitutional right of the public to attend criminal trials.\textsuperscript{127} This constitutional support for the right to know, however, was limited in scope because “the Supreme Court has never explicitly recognized

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\textsuperscript{125} All these cases address “either a broad enough right-to-information that individuals are almost certainly implicated” or “specifically refer to an individual’s ‘right-to-information.’” Katie Blevins, \textit{The Constitutional Right-to-Information on the Individual Level: As Suggested by First Amendment Precedent in the Supreme Court}, paper accepted for presentation by the Communication Law and Policy Division of the AEJMC annual conference, Denver, Colorado, August 4-7, 2010, at 5.
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\textsuperscript{126} Katie Blevins, \textit{The Constitutional Right-to-Information on the Individual Level: As Suggested by First Amendment Precedent in the Supreme Court}, paper accepted for presentation by the Communication Law and Policy Division of the AEJMC annual conference, Denver, Colorado, August 4-7, 2010, at 25.
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this right outside of judicial proceedings” since after 1980. As a result of lacking explicit and strong Supreme Court support, the efforts to conceptualize the right to know as a constitutional rather than statutory right have not succeeded.

However, the narrative is incomplete; scholars and journalists continue persuasive attempts to change the Supreme Court’s course. A change in direction of First Amendment jurisprudence is an expectation for the future, and despite the outcome, the theory for the value of a press brake on governmental activity and relevant efforts to grant freedom of information the status of constitutionality continue to provide legal and moral support for FOI advocates in the United States and elsewhere. As Blasi identified, the right to know closely interrelates with the role of mass media to expose corrupt or incompetent officials who tend to hide their activities. Without a constitutional right to access governmental records or information, the news media encounters great difficulty conducting vigorous and unfettered investigations, leaving governmental misconduct or transgressions unidentified and unexposed. The initial acquisition of information embodies the value of providing a check.

The Concept of the Right to Know in the Chinese Context


donr. pember & clay calvert, mass media law 323 (18th ed., 2013).

For example, legal scholars Roy Peled and Yoram Rabin have recently argued for a constitutional right to information. They contended that United States and many other democratic countries should incorporate right to know into their constitutions. Roy Peled & Yoram Rabin, The Constitutional Right to Information, 42 Columbia Human Rights Law Review 357, 357-401 (2011).


Chinese scholarly literature first began to discuss the Western concept of a “right to know” in the early 1990s.\textsuperscript{132} Even high-ranking political leaders sporadically mentioned, in public, the importance of the right to know. In a March 1999 article on village self-rule, Chunyun Jiang, then vice chairman of the National People’s Congress Standing Committee, described a growing rural concept of a “right to information”:

Following the deepening of rural reform and development of the market economy, farmers’ thinking, concepts, and value orientation have undergone profound changes. Their sense of democracy and their sense of participating in the management of economic and social affairs have constantly increased. And more and more, they want to have the right to information, dialogue, and decision-making. They long for direct participation in making decisions on major affairs in the village and the management of village affairs (emphasis added).”\textsuperscript{133}

Notably, the concept of the right to know was, generally, a politically sensitive topic in China throughout the 1990s and early 2000s because of a consensus among party hard-liners that freedom of information and expression contributed to the demise of the Soviet Union. Although Chunyun Jiang emphasized publicly the right to information, his comments were from the perspective of economic development rather than democratic values. In 2002, a retrospective television news program, “You Have the Right to Know,” did not broadcast because of its sensitive and controversial nature.\textsuperscript{134} Many conservative party and


\textsuperscript{134} \textit{News Probe} is a prominent China Central Television news program. Once Chinese audiences widely viewed its aggressive investigative journalism. 2002 marked the fifth anniversary of the program. The editors planned to produce a retrospective program to
government leaders perceive freedom of information and the right to know to be unpleasant because the two terms so closely link to freedom of expression and the Soviet glasnost initiative. As Chinese FOI expert, Weibing Xiao, stated, “An overall negative impression of Gorbachev’s glasnost reform highlighted political sensitivity to FOI and freedom of expression linkage, especially in the early stage of developing an FOI policy.”

In order to render the concept of the right to know politically acceptable, Chinese law reformers adopted an ambitious strategy. They delinked the Chinese concept of the right to know with freedom of expression and freedom of the press. They argued for a people’s right to know from the perspective of economic growth and informational development. They relied on the democratic political theory to expound the rationale and viability of the Chinese version of the right to know. China is not a democracy, at least by Western standards. In order to bridge the gap between the Chinese concept of democracy and the Western one, Chinese law reformers found inspirations from the principle of the sovereignty of the people embodied in the Constitution of 1982.

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The right to know or information rights are not included in China’s constitutional provisions. However, Chinese legal scholars argue that the Constitution of 1982 implies the right to know.138 Prolific Yale law scholar Jamie P. Horsley further suggested, “certain [Chinese] constitutional principles do establish a legal basis for OGI and open governance.”139 For example, Article 2 of the Constitution stipulates the “foundational principle” that all power belongs to the people and that the people are to manage state affairs and economic, cultural, and social affairs through various channels and in various ways.140 Article 3 provides that the people’s congresses create and supervise all administrative, judicial, and procuratorial141 organs of the state. The people elect, at different levels, the people’s congresses, which are responsible to the people and subject to


141 Procuratorial organs exercise the power of prosecution. They are elected by and report to the people’s congress at the same level. Qian Sun, Characteristics of China’s Procuratorial System, 2(2) Qiushi (April 2010).
the people’s supervision. Article 27 requires state agencies and functionaries to maintain close ties to the people, heed their opinions, and accept their supervision. Article 41 grants citizens the right to criticize and make suggestions regarding government agencies and their functionaries. The relevant state organ shall, in a responsible manner, adjudicate citizens’ complaints and charges against, or exposure to, violations of the law or derelictions of duty by any state organ or functionary. These constitutional rights granted to the people have comprehensive protection only with the precondition that the people have the right to obtain adequate information regarding operations of the government. Without the people’s right to know all aspects of governmental activities, the citizens are unable to exercise, fully and effectively, these constitutional rights.

According to Chinese reformers, freedom of information and the right to know are not alien to Chinese society. The assertions are that China has a long history of disclosing governmental information and the Constitution of 1982 supports the right to information and thus the concept becomes compatible with China’s socialist political system. Chinese law reformers’ assertion gained strength in late 2002 when the party and the central government fully endorsed the implementation of the Constitution. Leading political operatives in China desired to elevate the status of the Constitution in order to implement the strategy of ruling the state by the rule of law. Although the Constitution is the supreme

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142 Constitution 1982. Art.3.

143 Constitution 1982. Art.27.


law of the country, it had long history of disrespect, ignoring, or even trampling by a few powerful people. Jintao Hu stated in a speech commemorating the twentieth anniversary of the adoption of the Constitution, “Implementation of the rule of law first and foremost requires full enforcement of the Constitution.” He reiterated the central role of the Constitution in a speech marking the fiftieth anniversary of the National People’s Congress (NPC), stating, “[r]uling the state by the rule of law first needs ruling the state by the Constitution, [and] administration by law first requires administration by the Constitution.” On December 26, 2002, the Central Politburo of the Communist Party invited constitutional scholars to give lectures on the Constitution.

The Chinese law reformers’ strategy clearly succeeded. Research of “the right to know” lost its status as taboo after 2002. Scholars began to mention the key phrase, “right to know,” and attempted to include it in statutes via legislation. Scholarly articles, media


147 Weibing Xiao, Freedom of Information Reform in China: Information Flow Analysis 42 (2011); Jintao Hu, speech delivered at the 50th Anniversary of the National People’s Congress [胡锦涛在纪念全国人大成立 50 周年大会上的讲话], Beijing, September 15, 2004.


reports, and policy documents cited the term frequently.\textsuperscript{150} The term, “the right to know,” first appeared in an important Party document issued by the Fourth Plenum of the 16th Party Congress Central Committee in September 2004.\textsuperscript{151} This document listed the right to know as one of the Chinese people’s “four democratic rights.” \textsuperscript{152} According to the CCP, “four types of democracy” protect and permit the exercise of these four democratic rights.\textsuperscript{153} “Four democratic rights” and “four types of democracy” have frequent citation by


\textsuperscript{152} The party recognized the right to know one of four democratic rights Chinese citizens shall enjoy in a socialist democracy. The rights are: the right to vote (\textit{xuanjuquan} 选举权), the right to know (\textit{zhiqingquan} 知情权), the right to participate (\textit{canyuquan} 参与权), and the right to supervise (\textit{jianduquan} 监督权). Later revision defined and formalized the four democratic rights as the right to know (\textit{zhiqingquan} 知情权), the right to participate (\textit{canyuquan} 参与权), freedom of expression (\textit{biaodaquan} 表达权), and the right to supervise (\textit{jianduquan} 监督权).

\textsuperscript{153} The four types of democracy are democratic elections (\textit{minzhuxuanju} 民主选举), democratic decision-making (\textit{minzhujuece} 民主决策), democratic management (\textit{minzhuguanli} 民主管理) and democratic supervision (\textit{minzhuijandu} 民主监督). Villagers’ practices of self-rule inspired the four types of democracy in the 1980s and early 1990s. The term “four types of democracy” (\textit{sida minzhu 四大民主}) first appeared in a 1993 notice issued by the Ministry of Civil Affairs. Its first official use was in 1994 when the 10\textsuperscript{th} National Convention on Civil Affairs was held. Formalization and standardization of the term occurred in the 1997 party report issued by the 15\textsuperscript{th} National Congress of the Chinese Communist Party. The “four types of democracy” was later extended from villages to China’s urban communities. For detailed analysis of how China has experimented grassroots democracy in urban communities, see Chow Bing Ngeow, \textit{Democratic Development in China’s Urban Communities} (January 2010) (unpublished dissertation, Northeastern University) (on file with author). For how Chinese scholars interpret the “four types of democracy, see Keping Yu, \textit{Democracy in China: Challenge or Opportunity?} Harvard University,
major leaders attending important party meetings. The white paper on human rights, issued in 2004 by the State Council Information Office, also listed the right to know as one of the civil and political rights China protects as part of its human rights program.

Governmental resistance to the right to know, however, still existed, and at times, was overwhelming and tried to omit the key phrase, “the right to know,” from appearing in the national OGI law. Provisions of Guangzhou Municipality on Open Government Information 2003 were the first local OGI Rule that explicitly announced protection of “the right to

<http://www.ash.harvard.edu/extension/ash/docs/democracyinchina.pdf> (last visited November 18, 2012). For how the term was defined in the Chinese context, see Jieren, Democratic Elections, Democratic Decision-Making, Democratic Management, and Democratic Supervision [民主选举、民主决策、民主管理、民主监督], People’s Daily Online, September 26, 2008,


<http://www.ash.harvard.edu/extension/ash/docs/democracyinchina.pdf> (last visited November 18, 2012). For how the term was defined in the Chinese context, see Jieren, Democratic Elections, Democratic Decision-Making, Democratic Management, and Democratic Supervision [民主选举、民主决策、民主管理、民主监督], People’s Daily Online, September 26, 2008,

<http://cpc.people.com.cn/GB/134999/135000/811050.html> (last visited November 18, 2012). For how Chinese political leaders used the term in official documents, see Zemin Jiang, Hold High the Great Banner of Xiaoping Deng Theory for an All-round Advancement of the Cause of Building Socialism with Chinese Characteristics to the 21st Century [高举邓小平理论伟大旗帜，把建设有中国特色社会主义事业全面推向二十一世纪], speech delivered at the 15th Party National Congress, Beijing, September 1997; Zemin Jiang, Build a Well-off Society in an All-Round Way and Create a New Situation in Building Socialism with Chinese Characteristics [全面建设小康社会，开创中国特色社会主义事业新局面], speech delivered at the 16th National Congress of the CPC, Beijing, November 2002; Jintao Hu, Hold High the Great Banner of Socialism with Chinese Characteristics and Strive for New Victories in Budding a Moderately Prosperous Society in All respects [高举中国特色社会主义伟大旗帜 为夺取全面建设小康社会新胜利而奋斗], speech delivered at the 17th National Party Congress, Beijing, October 2007.

<http://www.ash.harvard.edu/extension/ash/docs/democracyinchina.pdf> (last visited November 18, 2012). For how the term was defined in the Chinese context, see Jieren, Democratic Elections, Democratic Decision-Making, Democratic Management, and Democratic Supervision [民主选举、民主决策、民主管理、民主监督], People’s Daily Online, September 26, 2008,

<http://cpc.people.com.cn/GB/134999/135000/811050.html> (last visited November 18, 2012). For how Chinese political leaders used the term in official documents, see Zemin Jiang, Hold High the Great Banner of Xiaoping Deng Theory for an All-round Advancement of the Cause of Building Socialism with Chinese Characteristics to the 21st Century [高举邓小平理论伟大旗帜，把建设有中国特色社会主义事业全面推向二十一世纪], speech delivered at the 15th Party National Congress, Beijing, September 1997; Zemin Jiang, Build a Well-off Society in an All-Round Way and Create a New Situation in Building Socialism with Chinese Characteristics [全面建设小康社会，开创中国特色社会主义事业新局面], speech delivered at the 16th National Congress of the CPC, Beijing, November 2002; Jintao Hu, Hold High the Great Banner of Socialism with Chinese Characteristics and Strive for New Victories in Budding a Moderately Prosperous Society in All respects [高举中国特色社会主义伟大旗帜 为夺取全面建设小康社会新胜利而奋斗], speech delivered at the 17th National Party Congress, Beijing, October 2007.

know.”\textsuperscript{156} The 2002 \textit{Academic Draft of OGI Regulations} also explicitly conferred to those requesting information “the right to know.”\textsuperscript{157} Unfortunately, the national \textit{OGI Regulations} do not contain the right.

Although Chinese political leaders use the phrase “the right to know” frequently in public speeches and policy documents, the people’ right to know clearly lacks statutory support as a result of the State Council’s decision to redact the phrase from the text of \textit{OGI Regulations}, and consequence of failing to include the right to know is extremely negative, placing requesters of information in an unfavorable position and governmental agencies in a more favorable position. Without explicit statutory and constitutional support for the right to know, citizens are more likely to confront informational non-disclosure and much less likely to seek administrative and judicial remedies for denied requests.

Although judges in China could not cite constitutional provisions as authority,\textsuperscript{158} explicit constitutional support for the right to know is still crucial. Explicit support would more easily allow arguing for a more progressive and inspiring FOI law in the future. Support would also provide convincing constitutional rationales for the enactment of \textit{Freedom of the Press Law} and any other relevant laws governing information. Some Chinese

\textsuperscript{156} \textit{Provisions of Guangzhou Municipality on Open Government Information 2003}. Art. 1 (stating that the legislative purpose of the law is the protection of “the right to know”).


\textsuperscript{158} Bo Li, \textit{What Is Constitutionalism? 1 Perspectives} (2000).
legal scholars\(^{159}\) and National People’s Congress deputies\(^{160}\) argue that the right to know shall be explicitly written into the *Constitution*. Such advocacy is laudable, providing a basis for creating a comprehensive legal framework for a Chinese protection of the right to know. The best option is amending *Constitution of 1982* and *OGI Regulations*, at an opportune time, to reflect the Chinese people’s aspirations for the right to know.

*Four Theories of the Press*

This study uses four theories of the press as a theoretical framework to conceptualize Chinese news media systems. Since publication in 1956, the four theories of the press are the bases for consistent critique and questioning by media scholars for a variety of reasons. Some scholars argued that the three authors’ classifications of media systems in the world are lagging far behind the world reality and too simple.\(^{161}\) Some scholars maintained that the authors of *Four Theories of the Press* misinterpreted Marxism

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and Leninism. Some scholars contended that the four theories overemphasize state policies but afford insufficient attention to journalistic autonomy. Some scholars insisted that the four theories rely on an outdated canon of political philosophy, and some criticized the three authors for failure to be value-free despite appearance to the contrary. Some scholars challenged the four theories for ignorance of non-western cultures, philosophies, and traditions, while others developed new models in an attempt to replace or update the four theories of the press. Despite all the criticism, Four Theories


of the Press remains a landmark study of national media systems. Today this seminal research is a must-read book for journalism students in the United States and elsewhere because of its simplicity, clarity, and strong philosophical underpinnings. The four theories are also a widely used resource for scholars as a foundational framework for examining media systems among nations.

Four Theories of the Press attempts to offer a general theoretical and philosophical framework to understand the roles and functions of mass communications in different societies. In this small book, Siebert, Peterson and Schramm argued that, according to different relationships between the state and the press, the world media systems could consist of four models: authoritarian, libertarian, social responsibility, and


170 Four Theories of the Press was required reading for journalism students including the current researcher who studied at the China School of Journalism in Beijing from 1993 to 1995.
Soviet/Communist. As the oldest among the four models, the authoritarian theory developed in England during the sixteenth and seventeenth centuries, and its foundation is centuries of authoritarian political thought from Plato to Machiavelli. Ownership of press organizations operating under this model can be either private or public. The chief purpose of mass media is to support and advance the policies of the government for absolute power. Criticism of political machinery and officials in power is intolerable.

Soviet Communist theory, an outgrowth of the authoritarian theory, arose from the political philosophies of Marx, Lenin, and Stalin. Press organizations, in this model, are state-owned mouthpieces of the government and the Communist Party. The Soviet theory considers mass media outlets as “collective propagandists,” “collective agitators,” “collective organizers,” and “instruments to be controlled by the state,” “instruments of social change and social control,” and “instruments of serious purpose.”

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172 According to authoritarian political thought, the state is superior to the individual. Without the state, individuals could not obtain happiness and civilization could not advance. Such thinking legitimizes state control of mass media.

173 Newspapers in most authoritarian media systems are in private hands. The state usually owns television stations operating in such media systems.

174 According to Marxist political thought, the press should not function as a fourth estate; instead, it is a part of the state apparatus. The Marxist notion of material and economic determinism legitimizes state ownership of mass communication facilities.

The libertarian theory, developed in England after 1688, employs liberalist political philosophies of John Milton, John Locke, John Stuart Mill, Thomas Jefferson and many others.\footnote{According to liberalist political thought, the individual is superior to the state. Individuals have the willingness and capacity to make rational decisions and create knowledge. The state exists to serve the needs of individuals. Such thinking delegitimizes state control of mass media.} Ownership of media organizations operating from the libertarian model is chiefly private. Mass media in this system are “information sources, entertainment providers, social knowledge creators, profit making machines, and most importantly the government’s watchdog.”\footnote{Xi Chen, The Dynamics of Chinese Media Practices and Regulation: Explanations and Interpretations (August 2007) (unpublished Ph.D. dissertation, Virginia Polytechnic Institute and State University) (on file with author), at 39.}

The social responsibility theory is an outgrowth of the libertarian theory, with development and practice in the United States in the twentieth century. The theory maintains a skeptical view of humanity and suspicion of the marketplace of ideas.\footnote{As a central tenet of liberal democracy, the belief in the marketplace of ideas maintains that truth or best policies result from competition among a wide variety of ideas in free, transparent public discourse. However, in reality, as the media concentration and monopolization become increasingly evident in developed countries, the diversity of the opinions’ market dwindles and adversely affects the people’s right to know.} Similar to mass media in libertarian systems, press organizations in the social responsibility model are private; publishers and journalists should assume moral responsibilities when informing the public. Unlike the libertarian theory that considers government to be the major opponent of liberty, governments operating in a social
responsibility system are encouraged to play positive roles in maintaining the freedom of individuals and society.\textsuperscript{179}

\textit{Four Theories of the Press in the Chinese Context}

Under the Soviet communist media system described by Siebert, Peterson and Schramm in their 1956 book,\textsuperscript{180} the state completely monopolized Soviet communist media, used it instrumentally by communist party for propagating party policies, directives, and ideologies, agitation of the public, and organizing social movements and events. Without press revenues from advertising, the government subsidized the media and party propaganda officials faithfully exercised political control of media content. Criticism of the party and the government was intolerable. In the area of educating and training journalists, loyalty to the party and understanding Marxist journalism received emphasis. The Soviet communist media had one single purpose, and one voice for ideology and policy. Consequently, “a great deal of sameness about the content of Soviet media on any day” was the norm.\textsuperscript{181} Soviet journalists had no legal access to government-held information and their reporting and interviewing activities had no legal protection.

When using the four theories of the press to examine communist media in pre-reform China, the current research finds striking similarities among the Chinese

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communist media and its Soviet counterpart for each of the eight categories: media ownership, media philosophy, funding sources, press censorship, watchdog role, journalism education, media content and media laws. For example, the Soviet concept that the mass media should act as the communist party’s collective propagandists, agitators, and organizers was particularly “instrumental in shaping the Chinese Communist Party’s journalism policy.”\textsuperscript{182} The only inconsistency between Soviet mass media and Mao’s media system arises from the watchdog role. Mao established an internal journalistic reference system\textsuperscript{183} to maintain surveillance of local officials; a similar system is absent in the former Soviet Union. However, the internal reference system generally failed to fulfill its watchdog role during Mao’s rule. In summary, a reasonable conclusion is that Chinese mass media under Mao coincides, comfortably, with the Soviet Communist model.\textsuperscript{184}

If the Soviet Communist model offers a similarly accurate picture of post-Mao Chinese journalistic theories and practices, discovery of that similarity is more uncertain due to both consistencies and inconsistencies in the two media structures. As for consistency, the communist legacy lingers in the reform-era Chinese mass media. For

\textsuperscript{182} Colin Sparks, \textit{Media Theory after the Fall of European Communism: Why the Old Models from East and West Won’t Do Any More? In De-Westernizing Media Studies} (James Curran & Myung-jin Park eds., 2003).

\textsuperscript{183} Under the journalistic internal reference system, mainstream party-run and government-run news media outlets in China gather intelligence for the party and the government. Journalists and publishers of internal journalistic periodicals cover controversial and sensitive news events and analysis. Leading officials at various levels read those periodicals carefully to keep themselves informed and make decisions accordingly. All the contents in the periodicals are protected as state secrets. Chapter Eight examines the journalistic internal reference system.

\textsuperscript{184} For a description of Chinese mass media during the pre-reform era, see \textit{Alan P. L. Liu, Communications and National Integration in Communist China} (1971).
example, like the Soviet communist media system, ownership of Chinese media during the
reform era remains with the state.185 All four generations of the leadership (Zedong Mao, Xiaoping Deng, Zemin Jiang, and Jintao Hu) consistently stressed the media’s role as
mouthpiece and the importance of positive propaganda.186 Funding for major media outlets in China is governmental despite commercialization that began in the 1990s.187 Censorship of media content is the continuing responsibility of propaganda officials at various
levels,188 and party loyalty is an emphasis in journalism education.189 Propaganda

185 Yuezhi Zhao, Media, Market, and Democracy in China: Between the Party Line and the Bottom Line (1998). The only exception might be the Internet. Private Internet companies such as Baidu, Sina and QQ dominate the Chinese Internet market due to the absence of powerful state-controlled Internet companies. Min Jiang, Internet Companies in China: Dancing between the Party Line and the Bottom Line, 47 Asie Visions (2012).


188 For example, Mainland China continues to block many foreign social networking websites including YouTube, Twitter and My Space, dubbing the blocking system, “the great firewall of China.” Michael Bristow, China’s Internet Spin Doctors, BBC, December 16, 2008, <http://news.bbc.co.uk/2/hi/asia-pacific/7783640.stm> (last visited November 18, 2012). The Central Propaganda Department and its provincial and local counterparts are still functional. They issue party directives and orders to prevent journalists from covering certain controversial issues and major public emergency incidents. Tingjun Wu & Changyong Xia, History and Status Quo of Crisis Communication in China [我国公共危机传播的历史回顾与现状分析], 6 Journal of Modern Communication 32 (2010).

189 Political indoctrination remains an important component of Chinese journalism education in colleges during the reform era. When studying at the China School of
continues to dominate the media content, despite expanded newspaper sections for entertainment and sports.\textsuperscript{190}

Concerning inconsistencies, noticeable libertarian elements began to emerge in post-Mao Chinese media.\textsuperscript{191} For instance, unlike the Soviet communist media system, most Chinese media outlets are no longer governmental institutions. Instead, they have become state-owned enterprises.\textsuperscript{192} Chinese media, today, welcomes foreign and private investment, although with some preconditions.\textsuperscript{193} In addition to role of mouthpiece,

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Journalism (1993-1995), the current researcher had to take courses such as Marxist journalism, world politics, and socialist market economy. Those Marxism-related and politics-related courses were mandatory. Those courses emphasized the virtue of party journalism. Similar courses continue to be mandatory for journalism college students in China.
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\textsuperscript{190}As China specialist David Shambaugh noted, the propaganda system (including the Central Propaganda Department, the State Council Information Office, the Ministry of Information Industry, the Ministry of Culture, the State Administration of Radio, Film, and Television, the General Administration of Press and Publication, and many other relevant party and government apparatus) in China today “remains effective in controlling most of the information that reaches the Chinese public and officialdom.” David Shambaugh, \textit{China's Propaganda System: Institutions, Processes and Efficacy}, 57 \textit{The China Journal} 25, 25 (2007).


\textsuperscript{193}Today, News Corporation, Viacom, Sony Pictures and many other foreign media conglomerates have established joint ventures with Chinese media companies, although
Chinese media are encouraged to disseminate information and transmit public opinion.\(^\text{194}\)

As state-owned enterprises, the majority of Chinese media companies have to be self-reliant to generate profit in order to survive and prosper in the market.\(^\text{195}\) Political control of media content becomes increasingly haphazard for non-sensitive issues.\(^\text{196}\) Investigative journalism is permissible and media outlets have adopted a greater watchdog role.\(^\text{197}\)


\(^\text{194}\) In fact, in addition to the traditional role of party propaganda, Chinese mass media, especially market-oriented metropolitan newspapers, have developed a competing paradigm of professional journalism. According to this new paradigm, news media in China are disseminators of information, watchdogs of government, and protectors of public interests. Zhongdang Pan & Joseph Man Chan, *Shifting Journalistic Paradigms: How China’s Journalists Assess “Media Exemplars”*, 30 COMMUNICATION RESEARCH 649, 649-82 (2003).


\(^\text{196}\) Even online discussions of sensitive issues like criticizing government policies and officials are not always censored today in China. For example, according to a research finding by Gary King, director of Harvard University’s Institute of Quantitative Social Science, Chinese social media censors today normally do not delete online posts criticizing the government and government leaders. What are censored are online postings calling for people to take collective actions (e.g., demonstrating or rioting somewhere, gathering together in large groups). Gary King, Jennifer Pan & Margaret Roberts, *How Censorship in China Allows Government Criticism But Silences Collective Expression*, Harvard University, October 2, 2012, <http://gking.harvard.edu/files/censored.pdf> (last visited November 18, 2012); Gary King, *China’s “Internet Police” Targets Collective Action*, National Public Radio, August 8, 2012, <http://www.npr.org/2012/08/08/158448847/chinas-internet-police-targets-collective-action> (last visited November 18, 2012).

\(^\text{197}\) *Caijing* magazine, *China Youth Daily*’s Freezing Point, *Southern Weekend* and many other news outlets have reputations in China for aggressive investigative journalism. Editor of *Caijing* Hu Shuli earned the title of “the most dangerous woman in China” for her role in
Western journalistic theories and practices have become an important component of Chinese journalism education.\(^{198}\) Media content is increasingly diversified as propaganda, news and entertainment coexist, \(^{199}\) and legal protection of journalism is improving.\(^{200}\)


\(^{198}\) With Western research and theories of communications appeared in college curricula, Chinese journalism education during the reform era has attempted to combine political indoctrination with professional training. Anecdotal evidence arises from a graduate course of study at the China School of Journalism (1993-1995); courses included Marxist journalism, world politics, socialist market economy, journalism ethics, journalism history, news writing and editing, English news writing and interviewing, French, computer technology, marketing, advertising. Western press theories and practices, and journalistic photography. Two Fulbright-sponsored professors from American universities taught English news writing.


Given the theoretical and practical inconsistencies and consistencies, many scholars of media studies argued that the four theories of the press including the Soviet Communist model have become outdated and irrelevant when assessing the nature of Chinese media during the liberalizing reform. For instance, Hallin and Mancini argued that the four theories of the press are no longer useful and, “it is time to give it a decent burial and move on to the development of more sophisticated models based on real comparative analysis.”

Chengju Huang insisted Soviet Communist theory “is significantly insufficient in conceptualizing the [post-Mao] Chinese case” for four reasons: post-Mao Chinese news media are multifunctional media entities; the reform era’s relaxed media control; positive, instrumental use of media in post-Mao China; state socialism exemplified by Soviet Communist media conflicts with market socialism exemplified by post-Maoist media.

To the contrary, arguably, the Soviet Communist model remains relevant and valid in today’s Chinese context. Undeniably, Chinese media are moving toward liberalization, commercialization, technological innovation, and professionalization. However, the power of such trends on regime change is actually an exaggeration. Above all, the fundamental


relationship among the press, the party, and the government does not change at all. Despite the liberalizing trends, the party-state remains dominant over Chinese media in the reform era. Bruce Dickson, a prominent political science scholar of modern Chinese politics, stated: 

> The commercialization of the media and the dissemination of new communication technology, especially the Internet and mobile phones, have weakened the party's control over the follow of information, but it is still able to limit the spread of unwanted news by blocking Internet sites, arresting journalists and editors, and closing down newspapers and magazines that stray too far from the party's guidelines.204

Given a lack of fundamental change in party-press relations in China, accumulating libertarian elements are insufficient to trigger a reclassification of Chinese media. Of course, libertarian changes of Chinese media identified earlier are important to acknowledge, but they are evolutionary, not revolutionary. The party has created and encouraged all those changes. In other words, mass media in China today remain in the party's orbit, a socialist body with a capitalist face.

Actually, many media scholars agree that despite its limitations, the four theories of the press are useful for contemporary comparative media research. According to influential media scholar, Denis McQuail, the four theories proposed by Seibert and his colleagues provide a framework for understanding the relationship between media and society. All the new theories are modifications of the “four theories” by addition or subtraction.205 Communication scholars, Junhao Hong and Jonathan Becker, suggested that the four

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theories’ classifications of the media systems are still very useful in interpreting media
developments in post-communist countries.  

_Democratization, News Media and Transparency_

This current research examines democratization theories and discusses news
media’s contributions to governmental transparency, especially in authoritarian regimes.
Political science scholars disagree on what constitutes democracy; however, they almost all
agree that characterization of democracy includes the presence of at least one of three
elements: competition of top leaders through fair, free, and periodic elections, participation
of citizens who enjoy the freedom to vote and run for office, political rights and civil
liberties. According to democratization theories, in every wave of democratization,
democracy supersedes authoritarian regimes, and some develop into consolidated
democracies. Reverse waves occur when democracies collapse and authoritarianism
returns.  

Political scientists, Gasiorowski and Power, argued that more than 60 percent of the
third world’s new democracies collapse within 12 years of establishing a democracy. If a

206 Hong applied the four theories in his analysis of internationalization of Chinese
television. For more details of his analysis, see Junhao Hong, _The Internationalization of
Becker applied the four theories in studying media in post cold-war Russia. For more
details of his study, see Jonathan Becker, _Lessons from Russia: A Neo-Authoritarian Media

207 For scholarly discussions of the basic concepts of authoritarianism, democracy,
authoritarian consolidation and collapse, democratic consolidation and collapse, see
Samuel P. Huntington, _The Third Wave: Democratization in the late Twentieth Century_
(1991); Steven Levitsky & Lucan A. Way, _The Rise of Competitive Authoritarianism_, 13
_Journal of Democracy_ 51, 51-65 (2002); Steven J. Hood, _The Myths of Asian-Style Democracy_,
38 _Asian Survey_ 853, 853-66 (1998); Andreas Schedler, _What is Democratic Consolidation?_
democracy survives for at least 12 years, then a safe assumption is that the regime has consolidated and becomes less likely to fail. This applies to new authoritarian regimes, as well.208 China has passed the twelve-year rule; the PRC established itself as an authoritarian regime in 1949.

Scholars developed many measures to gauge the extent of a country’s authoritarianism or democracy. Among them, five are authoritative and widely used: the Freedom House Scores,209 the Vanhanen Polyarchy Dataset,210 the Polity IV Dataset,211 the Political Regime Change Dataset,212 and the ACLP Political Regime Classifications dataset.213 All five measures consistently rate China as an authoritarian regime.


The role of news media in the democratization process has a long history of study. Many political science scholars insist that news media guarantee governmental transparency, vital for democracy. According to Larry Diamond and Leonardo Morlino, transparency is an essential element of eight principal dimensions of democratic quality. Many scholars believe that news media are instrumental for eliminating authoritarian regimes and installing democracies. For example, influential political scientist, Samuel Huntington, argued that snowballing effects are a factor contributing to the third wave of democratization. In explanation for the effect in the third wave rather than the first two waves, he stated: "The reason is the tremendous expansion in global communications and transportation that occurred in the decades after World War II and particularly the blanketing of the world by television and communications satellites in the 1970s."

**Literature Review**


215 The eight different dimensions of democratic quality are: the rule of law, participation, competition, vertical accountability, horizontal accountability, respect for civil and political freedoms, the progressive implementation of greater political equality, and responsiveness. Larry Diamond & Leonardo Morlino, The Quality of Democracy: An Overview, 15 JOURNAL OF DEMOCRACY 21, 21-22 (2004).

216 Samuel P. Huntington, The Third Wave: Democratization in the late Twentieth Century 100 (1991). Other factors are: deepening crisis for the legitimacy of authoritarian systems, global economic prosperity in the 1960s, changes among churches from defenders of status quo to opponents of authoritarianism, European community membership expansion, U.S. promotion of human rights and democracy, and Gorbachev’s dramatic policy changes in the U.S.S.R.

Freedom of Information legislation is a regular topic of research in law journals. A search of the HeinOnline database\textsuperscript{218} revealed 727 articles in law journals (in all disciplines) featuring “freedom of information” in their titles. Another HeinOnline search identified 19,562 articles in law journals (in all disciplines) featuring “freedom of information” in their texts. A search of the ProQuest Dissertations & Theses database\textsuperscript{219} revealed 1676 dissertations and theses featuring “freedom of information” in their texts. Some books concern freedom of information and many Internet resources are available.\textsuperscript{220} The presence of this large body of academic literature dealing with freedom of information

\textsuperscript{218} HeinOnline is one of the largest databases for legal research. For more information about HeinOnline, refer to its official website: <http://home.heinonline.org/about/what-is-hein-online/> (last visited November 18, 2012).

\textsuperscript{219} ProQuest Dissertations & Theses is the world’s largest database archiving Ph.D. dissertations and master’s theses.

indicates tremendous scholarly interest, and particularly for American freedom of information. A search of HeinOnline revealed 118 articles in law journals (in all disciplines) featuring “U.S. Freedom of information Act” in their texts. The overall legislative development in China has received significant scrutiny in the West. A search of the HeinOnline database revealed 101,179 articles in law journals (in all disciplines) featuring “China” in their texts and 5,393 articles featuring “China” in their titles.

In a sharp contrast, legal research into Chinese freedom of information is rare. A HeinOnline search yielded only one article containing “open government information regulations” in its footnote,221 and only two articles containing “regulations on open government information” in their texts.222 A similar search revealed only one article featuring “Chinese government transparency” in its text.223 Another HeinOnline search identified zero articles in law journals (in all disciplines) featuring “Chinese freedom of information” in their texts. A search of the ProQuest Dissertations & Theses database revealed zero dissertations and theses featuring “Chinese freedom of information” in their texts.

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222 Carl F. Minzner, Riots and Cover-ups: Counterproductive Control of Local Agents in China, 31 University of Pennsylvania Journal of International Law 115 (2009-2010). This article only briefly mentions the Chinese freedom of information law without any elaboration. China’s Efforts and Achievements in Promoting the Rule of Law, 7 Chinese Journal of International Law 513 (2008). This article is not the product of legal scholars, rather the Chinese government as an official whitepaper. The mention of Chinese OGI Regulations intended to publicize China’s achievements in promoting the rule of law.

A search of other databases\textsuperscript{224} and the Internet yielded a small number of legal journal’s articles, books and other scholarly pieces focusing exclusively on Chinese OGI Regulations. Hanhua Zhou from the Chinese Academy of Social Sciences, a prolific legal scholar, researched Chinese governmental transparency laws and added personal involvement to creation of the Chinese FOI law. In a chapter of \textit{The Right to Know: Transparency for an Open World}, Hanhua Zhou discussed, from an insider’s perspective, methods, and rationales for China’s embarking on a path to governmental transparency. He concluded that the creation of the FOI law in China was elitist-driven.\textsuperscript{225} In a Chinese-language journal article, Hanhua Zhou identified legal challenges facing Chinese FOI law and provided policy recommendations.\textsuperscript{226}

Weibing Xiao, a scholar from Shanghai University of Political Science and Law, attempted to explain the rationales for China’s freedom of information reform in several of his articles. He concluded that democratization is a key rationale for the rise of Chinese governmental transparency.\textsuperscript{227} In his book \textit{Freedom of Information Reform in China}:

\textsuperscript{224} Such databases are Google Scholar, Google Books, Westlaw, JSTOR, Communication and Mass Media Complete, and many others.


\textsuperscript{226} HanHua Zhou, \textit{Some Problems and Policy Suggestions Concerning the Implementation of OGI Regulations} [政府信息公开条例》实施的问题与对策探讨], \textit{7 Chinese Public Administration} 11 (2009).

Information Flow Analysis, Weibing Xiao asserted that social, political, and legal factors should have central roles in facilitating the development of FOI in China.  

Ping Yin, another Chinese legal scholar, examined the contribution of the SARS crisis and other public health incidents to the formulation of the FOI law. China specialist Changhua Wu investigated public access to environmental information in China before OGI Regulations went into effect. Two experts explored the same topic in 2010 and produced a lengthy report in which they provided recommendations for Chinese policy makers to improve access to environmental information. In their Chinese-language journal articles, other Chinese scholars compared China’s freedom of information law to similar laws of the United States and other Western nations. Some Chinese-language theses and

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dissertations discussed the legal and conceptual framework needed to establish China’s open government information mechanism and provided suggestions for law reformers to consider when proposing a FOI law.\textsuperscript{233}

Jamie P. Horsley from Yale University Law School is among the most productive Western scholars who focus on the Chinese government’s transparency laws. Several of Horsley’s articles concerning Chinese OGI Regulations examined the statutory language of the law and evaluated the law’s efficacy.\textsuperscript{234} In a chapter of The Right to Know: Transparency for an Open World, Horsley examined special considerations China adopted when preparing


\textsuperscript{234} Shili He [Jamie P. Horsley], Some Thoughts on Typical Exemptions for Government Information Disclosure [关于政府信息免予公开典型条款的几点思考] 3 Politics Science and Law 37 (2009); Jamie P. Horsley, China Adopts First Nationwide Open Government Information Regulations, on Freedominfo.org, posted May 9, 2007; Jamie P. Horsley, Update on China’s Open Government Information Regulations: Surprising Public Demand Yielding Some Positive Results, on Freedominfo.org, posted April 23, 2010.
the FOI law. Legal scholar, Jens. F. Reinertsen, examined the direction _OGI Regulations_ followed according to international standards. Other Western scholars conducted a survey among Chinese governmental officials and found that key issues surrounding implementation of _OGI Regulations_ appear in many other countries. FOI expert Paul Hubbard argued that Chinese governmental agencies at central and local levels are developing a wide range of OGI implementation models due to a lack of a strong legal context and clear directives for guidance.

The pertinent literature reviewed contributed to research of Chinese governmental transparency jurisprudence. However, ignoring the limitations of the existing literature is difficult. Most Chinese-language research projects regarding Chinese FOI are superficial, limited in scope, and lack in-depth analyses. In general, the quality of English-language scholarship is higher than that in Chinese, but none of the scholarship in English provided a detailed and comprehensive account of the legislative history of Chinese _OGI Regulations_. They have also failed to explain, convincingly, the avenue by which Western concepts of

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freedom of information insinuated into the Chinese, authoritarian body politic and culture, whose innate governmental secrecy represents the norm of the nation’s modern history.\textsuperscript{239}

Few of the scholarly articles or books in English are sufficiently comprehensive to cover a wide range of topics pertaining to the Chinese FOI. For example, none of Western FOI scholarship discussed, in detail, the evolution of the informational policy of the Chinese government over the last four thousand years, the influence of ancient schools of thought in relation to government transparency on contemporary Chinese governmental leaders, or the Chinese news media’s contribution to formation of the FOI law, or Chinese reporters’ use of the law to promote oversight of government. No scholars examined the enforcement of \textit{OGI Regulations} by using fresh data gathered as recently as November 2012. No FOI scholars examined the relationship between journalistic internal documents and people’s legal rights for access. Most scholars of Chinese government’s transparency have no

\textsuperscript{239} For example, Chinese scholar Weibing Xiao argued that democratization is a key rationale for China’s efforts to promote greater transparency. \textit{Weibing Xiao, Democratization As A Rationale for FOI Reform in China, in Freedom of Information Reform in China: Information Flow Analysis 38-50} (2011). His argument seems not fully supportable because the Chinese FOI law is a means by which the central party and governmental authorities maintain legitimacy for the party. The adoption of the law is not a part of China’s political liberalization. In other words, the law was possible not because Chinese leaders believed strongly in democratic values that are widely accepted in the Western world. The law was possible because of Chinese leaders’ assumptions that the law could promote economic growth, informational development, corruption prevention, law-based administration, and crisis communication management. These are all goals set by the party within the framework of socialism with Chinese characteristics. For analysis of how public incidents like 2003 SARS episode prompted the Chinese government to improve their crisis communication, see Lidan Chen, \textit{Open Information System and Crisis Communication in China,} 1 Chinese Journal of Communication 38, 38-54 (April 2008); Tingjun Wu & Changyong Xia, \textit{History and Status Quo of Crisis Communication in China} [我国公共危机传播的历史回顾与现状分析], 6 Journal of Modern Communication 32 (2010).
professional experiences in journalism or other media-related sectors. Few scholars have comprehensively examined OGI-related access laws in China. Given the lack of scholarship for Chinese freedom of information, as evidenced by the literature review, the current research seeks to fill this gap in the academic literature.

**Summary and Conclusion**

This chapter examines all the major theories used in the research. The concept of freedom of information has as its foundations the theories of freedom of expression, right to know, democratic politics, and the First Amendment’s value as a check on governmental activity. The freedom of expression theory argues for freedom of information from the perspective of truth and liberty. The right to know theory argues for freedom of information from the perspective of access rights. The democratic political theory argues for freedom of information from the perspective of democratic governance. The value of the First Amendment as a check on government theory argues for freedom of information from the perspective of institutionalized media. The four theories mentioned earlier operate in concert to provide solid philosophical, legal, and moral foundations for freedom of information.

The concept of freedom of information in the Chinese context lacks theoretical support from freedom of expression and checking value theories. Consistent with other research findings, this study finds that Chinese legal scholars who introduced the concept of “the right to know” to China disconnected the right to know from freedom of expression and freedom of the press for political reasons. They argued for the people’s right to know

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240 This study represents legal research on media law. Consequently, highlighting the relationship between journalism and freedom of information is rational. On the other hand, many legal scholars consider FOI law as administrative rather than strictly media-related.
from the perspective of the *Chinese Constitution* because the supreme law, like many other constitutions in the world, upholds the sovereignty of the people, and thus, implies a right to access vital governmental information.

This chapter explores the four theories of the press and examines the applicability of the theories to the Chinese context. This study argues that the theories remain useful for understanding the evolution of the Chinese media system that plays an important role in promoting the flow of information in Chinese society. The chapter also investigates democratization theories and concludes that the freedom of information movement in China requires understanding from the framework of authoritarian transparency because China’s ranking by all the major measures of democracy is one of authoritarianism.

This chapter thoroughly reviews existing literature pertaining to the Chinese FOI law and concludes that the available, existing literature contributes to knowledge of freedom of information legislation in China. However, the existing literature, in general, lacks depth, scope, comprehensiveness, and ingenuity. Many important questions remain unanswered, and the gap in the academic literature regarding the Chinese freedom of information is vast. All subsequent chapters attempt to fill this void.
Chapter Three: Origins and Development of Freedom of Information Laws in the World

Introduction

Inspired by the success of many national FOI laws, China inculcated international concepts when formulating OGI Regulations. This chapter will discuss the development of freedom of information legislation in Sweden, the United States and many other countries in order to provide a reference point for the evolution of freedom of information in China. The chapter will trace the birth of the first freedom of information law in the world in Sweden and the law’s spirit spreading to other parts of the world. This chapter will explore several patterns and trends emerging in the global expansion of freedom of information law.

The U.S. FOI law serves as the most influential example for many other countries and U.S. state legislatures to emulate. An overview of this law would provide an important international context to understand China’s own FOI law. This chapter will examine the origins and milestones prior to enactment of U.S. FOIA in 1966 and investigate what roles American media professionals have played in formulating, amending and using their federal freedom of information law. The emphasis on the role of U.S. journalists in FOI is an attempt to provide a reference for the examination of journalism’s role in Chinese freedom of information, which will be examined in Chapter Nine.

From Sweden to Yemen: Global Expansion of Freedom of Information Laws

Governmental transparency has its roots in ancient Greece. For example, Aristotle noted that the ideal state should not be too large in either size or population because
“everyone [in the state] must know what is going on.” However, the modern concept of public access to governmental information originated during the European Enlightenment. In 1766, Sweden enacted the world’s first freedom of information law, known as *Freedom-of-Press and the Right-of-Access to Public Records Act*. According to the law, official documents were to be available immediately upon request, for no charge. According to Swedish clergyman and congressman, Anders Chydenius, the principal sponsor of the Swedish freedom of information law, Sweden’s inspiration was the Chinese practice of governmental accountability and transparency.

More than 20 years later, France and the Netherlands embraced similar principles of official transparency in their *Declaration of the Rights of Man*. The South American

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244 Some scholars argued that the concept of freedom of information actually first appeared in China more than 1,000 years ago during the Tang Dynasty. According to this argument, Emperor Tai’Zong (599-649 A.D.) established an “Imperial Censorate,” a powerful organization of highly educated, scholarly officials recorded governmental documents and activities and willingly criticized the government, including the emperor. The information policy of Tai’Zong inspired Anders Chydenius (1729-1803), born in Sotkamo, Sweden (today’s northeastern Finland). He was a clergyman, Enlightenment philosopher, and great proponent of freedom of the press. He persuaded the Swedish government to adopt the Freedom of Press Act in 1766, the world’s first Freedom of information legislation. Stephan Lamble, *Freedom of Information, a Finnish Clergyman’s Gift to Democracy*, 97 *Freedom of Information Review* 2, 2-8 (2002).

245 The *1789 French Declaration of the Rights of Man* called for access to information of governmental budgets. A similar declaration adopted in the Netherlands in 1795 stated
country of Colombia followed suit. In 1888, Columbia enacted *Code of Political and Municipal Organization*, granting citizens the legal right to request documents held by agencies or in official archives.246

In 1966, 200 years after the Swedish FOI law's inception, the United States adopted an FOI law, *Freedom of Information Act (FOIA)*. Since then the American public and press have had an “enforceable legal right” to inspect documents or records held by the federal government.247 The U.S. right to information law inspired many other nations to join the international freedom of information community, although some scholars believe using *U.S. FOIA* as a model is a mistake.248

In the 1970s and 1980s, many developed nations (Denmark, Norway, France, Australia, New Zealand, Canada, and Austria) adopted FOI laws. The global movement


247 HAROLD L. CROSS, *THE PEOPLE’S RIGHT TO KNOW: Legal Access to Public Records and Proceedings* 197 (1953). Cross was counsel to the American Society of Newspaper Editors and was a legal adviser to the subcommittees for the Government Operations Committee, which was responsible for drafting the *FOIA* legislation.

248 Finland, Norway, Denmark and the United States used the Swedish FOI system as a model. However, many more countries adopted the U.S. model. According to legal scholar, Stephen Lamble, using the U.S. FOI law as a model is a mistake because the U.S. law is not as progressive and inspiring as FOI laws in Sweden and many newly emerging democracies. Many countries that transplanted the American freedom of information system face a variety of implementation problems. Stephen Lamble, *UNITED STATES FOI LAWS ARE A POOR MODEL FOR STATUTES IN OTHER COUNTRIES*, 106 *FREEDOM OF INFORMATION REVIEW* 51 (2003).
gathered momentum during the early 1990s when the Cold War ended and many communist countries in Central and Eastern Europe became new democracies. Although China inspired the world’s first FOI law and was “the model country of the freedom of the press”\(^{249}\) more than 1,000 years ago, China is late in adopting FOI law of its own. Enactment of freedom of information legislation did not occur in China until 2007 when three other nations (Jordan, Nepal and Kyrgyzstan) and a British overseas territory (Cayman Islands) joined the global FOI community in the same year. The momentum remains strong, in 2011 Brazil, Malaysia, Nigeria, Niger, Mongolia, Tunisia, and El Salvador enacted FOI laws and in 2012 Yemen adopted right to know legislation.

Countries’ tendencies toward freedom of information laws arise from the significant benefits: less corruption, more freedom from hunger, healthier societies; cleaner environment; greater respect for human rights, more respect for privacy, more secure societies; more effective democracies, more accountability, and more public participation.\(^{250}\) As of 2012, more than 90 countries enacted various forms of laws to protect people’s right to access government-held records and documents. Among the more than 90 FOI countries, most are more developed. Since 1999, enactment of 73 percent of exiting FOI laws has occurred.


Noticeably, significant numbers of international or intergovernmental organizations are adopting FOI laws and policies to promote official transparency beyond the national level. For example, the United Nations Development Program (UNDP), the European Parliament, the Council of the European Union, the World Bank and all four regional development banks\(^{251}\) adopted informational disclosure policies.\(^{252}\) Commenting on the positive aspects of proliferation of FOI legislation, Alasdair Roberts, author on government secrecy, said, “The burden was once on the proponents of access rights to make a case for transparency; today, the burden is on governments to make the case for secrecy.”\(^{253}\)

**Patterns and Trends in Global Explosion of Freedom of Information**

International FOI scholars identified four categories of FOI countries.\(^{254}\) The first is historical pioneers who instituted FOI laws prior to the third wave of democratization in the 1980s (such as Sweden, Finland, Denmark, Norway, Canada, Australia, New Zealand, the United States, France and Columbia).\(^{255}\) FOI laws in these countries are not particularly

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\(^{251}\) The four regional development banks are the Inter-American Development Bank, the African Development Bank Group, the Asian Development Bank, and the European Bank for Reconstruction and Development.

\(^{252}\) *Freedom of Information: A Comparative Legal Survey* 22-23 (Toby Mendel ed., 2\(^{nd}\) edn, 2008).


progressive or innovative, but they have comparatively effective enforcement.\textsuperscript{256} The second category of countries consists of those newly emerging democracies, recently freed from authoritarianism (Philippines, Spain, Portugal, South Korea, Thailand, South Africa, Mexico, and 22 former Soviet Union and Eastern Communist bloc countries). Their FOI laws tend to be very progressive and disclosure-friendly, at least in terms of statutory language, but enforcement commonly suffers from various internal and external influences.\textsuperscript{257} The third category of countries represents wealthy, well-established democracies (Japan, Austria, Italy, Netherlands, Belgium, Iceland, Ireland, Israel, Greece, UK, Switzerland, Germany, and Liechtenstein). They are late in adopting FOI laws despite long democratic traditions. Their FOI laws are much less progressive and innovative than those adopted in emerging democratic countries.\textsuperscript{258} The fourth category of countries is

\textsuperscript{256} John M. Ackerman & Irma E. Sandoval-Ballesteros, \textit{The Global Explosion of Freedom of Information Laws}, 58 \textit{Administration Law Review} 85, 110-12 (2006). In a ranking of quality of all the national FOI laws around the world, FOI laws in many of the first category countries, especially the older European laws, have poor scores. Fifteen of the bottom 20 FOI laws are from Europe. This ranking indicates that these old FOI laws are typically weak in scope, exceptions regimes, oversight and appeals mechanisms and legal requirement for publicizing access to information. \textit{World’s First Rating of Right to Information: 89 Countries Ranked}, Access-info.org, 28 September 2011, \texttt{<http://www.access-info.org/en/rti-rating/201-rti-rating>} (last visited November 18, 2012).

\textsuperscript{257} John M. Ackerman & Irma E. Sandoval-Ballesteros, \textit{The Global Explosion of Freedom of Information Laws}, 58 \textit{Administration Law Review} 85, 112-13 (2006). According to a ranking of quality of all the national FOI laws around the world, new or transitional democracies tend to have stronger FOI laws than old democracies. The top 20 countries are almost all new democracies and their FOI laws have an average age of just 5 years. \textit{World’s First Rating of Right to Information: 89 Countries Ranked}, Access-info.org, 28 September 2011, \texttt{<http://www.access-info.org/en/rti-rating/201-rti-rating>} (last visited November 18, 2012).

\textsuperscript{258} John M. Ackerman & Irma E. Sandoval-Ballesteros, \textit{The Global Explosion of Freedom of Information Laws}, 58 \textit{Administration Law Review} 85, 113-14 (2006). Countries in the third category have equally weak FOI laws as their counterparts in the first category, according to a ranking of quality of all the national FOI laws around the world. Austria is even rated at
developing nations who indicate no transition toward democracy (Pakistan, Jamaica, Belize, Antigua and Barbuda, Peru, Panama, Dominican Republic, Angola, Zimbabwe, Uganda and Turkey) and tend to have weaker FOI legislation.²⁵⁹

As for factors contributing to, and formulation of, FOI laws, FOI scholars and organizations identified some key aspects. The first finding is that the level of economic development does not correlate with the presence or absence of FOI laws. Many wealthy countries have no freedom of information laws (e.g., Singapore and Qatar). Conversely, many poor countries do not lack the legal right to know (e.g., Columbia and Ukraine).

“Although economic growth may create some pressures in favor of freedom of information, the decisive factors with regard to whether a FOI law will be passed are political.”²⁶⁰ The second finding is that civil society²⁶¹ and news media²⁶² play significant roles in adoption of

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²⁶² For example, after empirically examining the dataset of all FOI countries, FOI expert Jeannine Relly found that nations with strong news media rights tend to have greatest influence on global diffusion of freedom of information legislation. Jeannine E. Relly,
FOI laws in many countries. The third finding concerns the presence or absence of constitutional provisions for the right to information. Some countries, such as the United States and Malta, only acknowledge freedom of information as a statutory right but decline to acknowledge a constitutional right. Some countries, such as Venezuela and Kenya, have constitutional provisions for freedom of information but have not enacted relevant statutes. A growing number of countries have explicitly embraced both constitutional and statutory rights to access to government-held information.

The fourth finding concerning the global FOI movement involves two main types of actors who have roles contributing to creation of national FOI laws. The first group consists of international organizations, treaties, and conventions, many of which consider freedom of information to be a fundamental human right and either require or encourage member


263 In three cases Pell v. Procunier, 417 U.S. 817 (1974), Saxbe v. Washington Post, 417 U.S. 843 (1974) and Houchins v. KQED, 438 U.S. 1 (1978), the U.S. Supreme Court explicitly denied to acknowledge the constitutional right of access to official facilities. These three cases become the legal precedent for denying the constitutional status of American people’s right to know.

nations to adopt freedom of information laws. Such international actors include, but not limited to: the International Monetary Fund, the World Bank, the United Nations Convention Against Corruption, Article 19 with the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights, the UN Special Rapporteur on Freedom of Opinion and Expression, the United Nations Human Rights Committee, the 1992 Rio Declaration on Environment and Development, the UN Economic Commission on Europe (UNECE) Convention on Access to Environmental Information, the Council of Europe, the European Union,265 the African Union Convention on Preventing and Combating Corruption, the Southern African Development Community (SADC) Protocol Against Corruption, the Organization of American States,266 the Chapultepec Declaration, the Arab Charter on Human Rights, the Commonwealth, the Commonwealth of Independent States, the Asian Development Bank (ADB), and the Organization for Economic Cooperation and Development (OECD) Anti-Corruption Initiative for Asia-Pacific.267 The second type of international actors is non-governmental organizations


(NGOs) and advocacy groups who track the development of freedom of information around the world and, assist formulation and/or improvement of FOI laws, and actively promote freedom of information in many parts of the world. Such international actors include, but not limited to: the Open Society Institute, Article19, Article19, the Carter Center, Transparency International, the Access Initiative, Privacy International, Freedominfo.org and Right2INFO.org.

**History and Development of U.S. FOIA**

To some, understanding the campaign for greater freedom of information in the United States is easy due to the country’s democratic tradition. In fact, America’s journey to freedom of information was long and not without obstacles. In the 17th and 18th centuries in England, people had no statutory or common-law right to inspect public records or

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documents. Reporters could not cover the activities of the House of Commons and the House of Lords. Fines or imprisonment were the consequences for violators for reports deemed seditious. This legacy of British rule continued to American colonies whose officials disliked the idea of opening official activities to public inspection. Royal governor Sir William Berkeley of Virginia, in 1671, expressed strong resentment for the people’s right to know in correspondence with English Lords and commissioners:

...I thank God, we have no free schools nor printing, and I hope we shall not have these hundred years. For learning has brought disobedience, and heresy, and sects into the world, and printing has divulged them, and libels against the government. God keep us from both!279

In 1722, the royal governor of Pennsylvania, Sir William Keith, ordered printer and publisher, Andrew Bradford, not to print anything “relating to or concerning the affairs of this Government, or the government of any of the other of His Majesty’s Colonies.”280


278 Herbert N. Foerstel, Freedom of Information and the Right to Know: The Origins and Applications of the Freedom of Information Act 1 (1999). Between 1476 and 1776, the British used the seditious libel laws to punish political dissent. According to the laws, anyone including members of the media could be convicted and face penalties of fine and/or a life imprisonment if the individual had seditious intent when publishing anything promoting hatred or ridicule against the sovereign, heirs, or successors, the government of the United Kingdom, the House of Parliament or the administration of justice. Tom Crone, Philip Alberstat, Tom Cassels & Estelle Overs, Law and the Media 36 (2002).


The Constitutional Convention in Philadelphia held its deliberations in secret. After ratification of the *U.S. Constitution* and the *Bill of Rights*, in 1787 and 1791 respectively, many prominent leaders of the republic still chose secrecy. For example, the ratification vote of the Constitution in Philadelphia was secret and banned attendance of the public and the press at the Senate’s proceedings until 1796. Government secrecy was, in effect, legalized in 1789 when the Congress passed the Housekeeping Statute.

The statute said:

The head of each department is authorized to prescribe regulations, for the government of his department, the conduct of its officers and clerks, the distribution and

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281 George Washington, the presiding officer of the Constitutional Convention, warned one delegate stiffly: “I am sorry to find that some one Member of this Body [Convention] has been so neglectful of the secrets of the Convention as to drop in the State House a copy of their proceedings.” Daniel N. Hoffman, *Government Secrecy and the Founding Fathers: A Study in Constitutional Controls* 21 (1981).


283 There is a controversy over the existence of the concept of the right to know during the founding period of the republic. For example, David O’Brien contended that the concept was merely “an abstract political right” for the Founding Fathers of the nation, not “the concrete rights embodied in the First Amendment.” David O’Brien, *The Public’s Right to Know: The Supreme Court and the First Amendment* 19 (1981). However, Kiyul Uhm argued that, despite repeated practices of governmental secrecy during the founding period of the republic, the concept of the people’s right to know was “repeatedly articulated and underscored as one of the most important democratic principles.” Kiyul Uhm, *The Founders and Revolutionary Underpinning of the Concept of the Right to Know, 85 Journalism & Mass Communication Quarterly 393 (summer 2008). For example, James Wilson, one of the delegates to the Constitutional Convention, argued eloquently against governmental secrecy: “The people have a right to know what their Agents are doing or have done, and it should not be in the option of the Legislature to conceal their proceedings.” Kiyul Uhm, *The Founders and Revolutionary Underpinning of the Concept of the Right to Know, 85 Journalism & Mass Communication Quarterly 398 (summer 2008).

performance of its business, and the custody, *use and preservation* of the records, papers and property appertaining to it.\textsuperscript{285}

Official agencies regularly cited the phrase, “use and preservation,” to assert authority for rejecting disclosure of governmental information.\textsuperscript{286} A leading advocate of freedom of information later condemned the Housekeeping Statute as “the fountainhead of secrecy” in administrative agencies,\textsuperscript{287} and when the 1780 presidential campaign between Thomas Jefferson and Aaron Burr ended in a tie, the House vote to break the tie occurred behind closed doors.

During the 18\textsuperscript{th} and early 19\textsuperscript{th} centuries, the American news industry was largely partisan,\textsuperscript{288} with the media either directly or indirectly subsidized by major political parties. The focus of newspapers was to publish harsh editorials and opinions, not news, rendering access to government-held information an insignificant concern for editors.

Understandably, the American Bar Association (ABA), not the news media, was among the first to criticize the secrecy of federal agencies.\textsuperscript{289} A report of federal administrative agencies’ law, published by the ABA in 1934, harshly criticized official

\textsuperscript{285} 5 U.S.C. § 301 (emphasis added).


\textsuperscript{287} James S. Pope, *The Cult of Secrecy*, *Niemann Reports*, October 1951, at 9. James Pope was President of the American Society of Newspaper Editors in the 1950s.


In 1938, Roscoe Pound, chairman of the ABA’s Special Committee on Administrative Law, attacked governmental secrecy as “administrative absolutism.”

Congress enacted the federal Administrative Procedures Act (APA) in 1946 to increase transparency; however, the statutory language was so poor that the law provided the federal bureaucracy with numerous loopholes serving as “substantial statutory reasons not to release most requested information in its hands.”

In the 1950s, a coalition advocating a comprehensive law to promote governmental transparency emerged. Freedom of information advocates represented three primary interests: the media, bar associations and attorneys, and reform-minded members of Congress.

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293 For example, APA Secion 3 allowed agencies to hold documents “confidential for cause found,” but without definition. The section also allowed the government to withhold any information “requiring secrecy in the public interest” but it failed to establish such a standard. It required information requesters to be “properly and directly concerned” with the information sought; agencies could thus deny access on the grounds of irrelevancy. The APA also failed to provide judicial remedies for noncompliance. 5 U.S.C. § 1002 (1946).


Most media outlets ceased being party organs in the early 20th century.\textsuperscript{296} Their focus was no longer publishing virulent editorials and opinions; instead, they considered their major responsibility to be supervising the activities of the government. Many muckraker journalists\textsuperscript{297} exposed official misconduct and corruption through investigative journalism. Escalating official secrecy, following World War II, concerning primarily Cold War maneuvering, military readiness, and nuclear weapons research, outraged those reform-minded journalists and editors.

In order to facilitate reporting governmental activities, American reporters, editors, and publishers launched a highly organized political campaign for a statutory right to access official information.\textsuperscript{298} Under the leadership of James Russell Wiggins,\textsuperscript{299} James S. Pope,\textsuperscript{300} Harold L. Cross\textsuperscript{301} and other leading media executives and attorneys, the American Society of Newspapers Editors (ASNE), the Society of Professional Journalists (SPJ) and the

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\textsuperscript{297} For more information on the muckraker movement in American journalism history, see FRED JAMES COOK, THE MUCKRakers (1972); Aileen Gallagher, MUCKRAKERS: AMERICAN JOURNALISM DURING THE AGE OF REFORM (2006); YEARS OF CONSCIENCE: THE MUCKRAKERS: AN ANTHOLOGY OF REFORM JOURNALISM (Harvey Swados ed., 1962).
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\textsuperscript{299} James Russell Wiggins was managing editor and then executive editor of \textit{The Washington Post} from 1947 to 1968.
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\textsuperscript{300} James S. Pope was the first chairman of American Society of National Editors’ (ASNE) domestic Committee on Freedom of Information.
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\textsuperscript{301} Harold L. Cross was counsel for \textit{New York Herald Tribune} and lecturer at Columbia University School of Journalism.
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Associated Press Managing Editors (APME) brought the issue of officially controlled information to public’s and government’s attention. Each of these news professionals’ organizations established a Freedom of Information committee.\textsuperscript{302} The personal correspondence between James Russell Wiggins and his friends in the government and media industry “traces the development of the elements and structure of the 1966 law during the ten years before it’s drafting in the late 1950s.”\textsuperscript{303} In his groundbreaking book \textit{The People’s Right to Know},\textsuperscript{304} Harold Cross advocated elimination of the federal APA of 1946\textsuperscript{305} and the 1789 \textit{Housekeeping Statute}\textsuperscript{306} because they represented two major, legal obstacles to a right for people to know of governments’ activities. Enacting a piece of legislation on freedom of information could not have occurred without the help of journalists who had first-hand experiences for the need and difficulties in obtaining access to official information.

The legal establishment agitated for open records legislation to obtain documents from federal agencies as service for their clients. Attorneys often found requests for government-held information rejected without sufficient reason. It is clear that the


\textsuperscript{304} \textsc{Harold L. Cross}, \textit{The People’s Right to Know: Legal Access to Public Records and Proceedings} (1953). The book has become the bible of the freedom of information movement.

\textsuperscript{305} 5 U.S.C. § 1002 (1946).

freedom of information law was the direct result of persistent lobbying from journalists and attorneys, however, reform-minded congressmen finally made this law possible.

Some Congressmen involved themselves in the freedom of information movement due to disenchantment with administrative agencies’ efforts to withhold public records from congressional inspection.\(^\text{307}\) The congressional movement for greater governmental transparency, led by U.S. Representative John Moss of California,\(^\text{308}\) began in 1955.\(^\text{309}\) Congress conducted more than 10 years of hearings before the *Freedom of Information Act* finally became law in 1966.\(^\text{310}\)

According to *U.S. FOIA*, “any person” has the right to request release of government-held documents or records; the statute does not require *FOIA* requesters to explain the purpose of the request,\(^\text{311}\) and the burden of proof falls on the governmental agency to


\(^{308}\) Moss had personal experience of frustration when he requested administrative agency documents to verify Civil Service Commission claims that 2,800 federal employees were fired for “security reasons” and his request was flatly declined. Daniel Patrick Moynihan, *Secrecy: The American Experience* 172 (1998).

\(^{309}\) In 1955, Moss was appointed the chair of the House Committee on Government Operations, a committee charged with amending the infamous *Housekeeping Statute* and the federal *Administrative Procedures Act*.


justify decisions to reject disclosure.\textsuperscript{312} Official agencies must disclose all information requested, exempting only nine categories of information.\textsuperscript{313} The government also must disclose information affirmatively without a request being necessary.\textsuperscript{314} If information requests are declined or not responded to in a timely manner, the requester has the option to appeal to the agency’s officials.\textsuperscript{315} Upon denial of the administrative appeal, the requester may appeal the decision in federal court.\textsuperscript{316}

The U.S. news industry greeted adoption of \textit{FOIA} positively and American journalists continued to encourage strengthening the freedom of information laws after 1966. Whether or not Carl Bernstein and Bob Woodward of \textit{The Washington Post} used the \textit{U.S. FOIA} themselves in their coverage of the Watergate scandal is unclear, but certainly the Watergate controversy brought officials’ transparency into public consciousness. After the Watergate scandal, as the muckraker movement reemerged in the form of watchdog journalism in the 1980s, the press felt that \textit{U.S. FOIA} was not as effective as expected. In

\textsuperscript{312} 255 U.S.C. § 552(a)(4)(B).

\textsuperscript{313} Nine categories of information are exempt from \textit{U.S. FOIA}: national security matters; housekeeping materials (agency personnel rules and practices); materials exempted by other federal statutes; trade, commercial, or financial secrets; working papers/lawyer-client privileged materials; personal privacy files (personnel and medical files and similar files involving personal privacy); law enforcement records; financial institutions’ materials, and geological and geophysical data.

\textsuperscript{314} 5 U.S.C. § 552(a)(3)& §552(a)(4)(A)(2000). For example, organizational plans and federal agencies’ regulations should be available in public reading rooms. Agencies must publish in the Federal Register and on the Internet frequently requested information and records.


\textsuperscript{316} S. REP. No. 110-59, at 10 (2007).
order to facilitate better access to official information, the U.S. Congress strengthened the
FOIA of 1966 with a series of amendments.

The amendment of 1974 permitted federal district judges *in camera* inspection of
top-secret classified information to verify the requested information's classification,
established uniform search and copying fees among agencies,317 and imposed a limit of 10-
days for responses.318 Congress amended FOIA for the second time in 1976 to restrict the
discretion of agencies to withhold information.319 In 1986, amendments to *FOIA, Freedom
of Information Reform Act*,320 provided Congressional approval for broader exemptions for
law enforcement’s informational protection, but reduced fees for freedom of information
requests.321 Significant amendments occurred in 1996 when Congress passed *Electronic
Freedom of Information Act (EFOIA)*,322 which required governmental agencies to open
records stored or saved in any formats, including electronic. Under the affirmative
disclosure provision of the 1996 law, governmental agencies must use the Internet to
disseminate commonly requested information of official activities.323 The latest FOIA

318 5 U.S.C. § 552 (a) (6) (A) (i).
News 2204-05.
320 5 U.S.C. § 552 (b) (7).
321 5 U.S.C. §§ 552 (a) (4) (A) (i-vii).
Commonly requested information includes agencies’ annual reports, statements of agencies’
rules and policies, agencies’ adjudicative opinions and FOIA handbooks. Before 1996, only
revision occurred in 2007 when President George W. Bush signed *OPEN Government Act.*\(^{324}\) The amendment established tracking numbers for each request made online,\(^{325}\) compelled private-sector contractors to abide by the law’s disclosure rules,\(^{326}\) and ordered defendants who do not prevail in a *FOIA* lawsuit at the federal level to pay litigation costs.\(^{327}\)

**Use of *U.S. FOIA* by American Journalists for Investigative Journalism**

As of January 2012, at least 90 countries had nationwide freedom of information laws.\(^{328}\) In many FOI countries, media professionals and organizations played a key role in the promotion and eventual enactment of access to information laws.\(^{329}\) Once formulated, professionals in media sectors became among the most frequent users of the laws.\(^{330}\)

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\(^{325}\) Pub. L. No. 110-175, 121 Stat. 2524 (Sec.7).

\(^{326}\) Pub. L. No. 110-175 (Sec.9).

\(^{327}\) Pub. L. No. 110-175 (Sec.4).


\(^{329}\) Central and Eastern Europe is clearly one exception. “[T]hroughout the region media support for passage and implementation of access to information laws is spotty at best.” [The Right to Know: Transparency for an Open World] 136 (Ann Florini & Joseph E. Stiglitz eds., 2007).

America is a good case in point. Not surprisingly, American editors and reporters were not only among the first promoters of the freedom of information legislation, but also among the first users of the law. In the last four decades, American reporters produced a significant number of news stories based on information obtained through filing FOIA requests. “Using FOIA, journalists have held government accountable, exposed crime, and helped shape American public policy in major ways.”  

Some example exposés are:

- In 1981, San Francisco Chronicle acquired records via FOIA that revealed that during the 1950s and 1960s, the FBI agents covertly campaigned to fire University of California President Clark Kerr and conspired with the CIA director to pressure the California Board of Regents to force terminations of liberal professors.  

- In 1994, after a five-month investigation involving more than 150 interviews, 16 FOIA requests and nine governmental databases, U.S. News and World Report published a cover story portraying contamination of blood banks in America and found that risks to diseases through transfusion was far higher than people assumed.  

- In 1995, using documents obtained under the FOIA, Deseret News in Utah found that hundreds of U.S. sailors, in tests in the 1960s, suffered from cancer and other illnesses caused by exposure to warfare’s chemical and biological agents, and denial of health and

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332 Martin E. Halstuk, Of Secrets and Spies: Strengthening the Public’s Right to Know About the CIA, 17 STANDARD LAW AND POLICY REVIEW 353 (2006).

disability benefits to affected sailors. In 2002 the Pentagon officially acknowledged the existence of the tests.\textsuperscript{334}

- In 2003, \textit{The Philadelphia Inquirer} discovered from FOIA requests that federal citations for violations of pollution laws plummeted during 2002-2003 of the George W. Bush administration, dropping 35 percent, compared to the previous year.\textsuperscript{335}

- In 2005, according to the Food and Drug Administration (FDA) reports released to the Associated Press under the \textit{FOIA}, a new FDA-approved birth control patch demonstrated serious side effects. At least a dozen women died in 2004 from blood clots caused by using the patches.\textsuperscript{336}

- In 2004 and 2005, \textit{The Des Moines Register} filed FOIA requests to the U.S. Justice Department revealing a substantial overstatement of the recorded number of terrorism-related cases to justify demands for more funding and greater powers.\textsuperscript{337}


\textsuperscript{335} Martin E. Halstuk, \textit{Of Secrets and Spies: Strengthening the Public’s Right to Know About the CIA}, 17 \textit{STANDARD LAW AND POLICY REVIEW} 353 (2006).


In 2005, USA Today revealed, via FOIA requests, that the Bush administration paid prominent political commentator Armstrong Williams $240,000 to promote the No Child Left Behind Act. Also discovered by The Washington Post through FOIA was propaganda at the U.S. Department of Agriculture which paid a writer to craft stories favorable to federal conservation programs.

In 2006, the Department of Defense released a complete list of all former and current detainees held at Guantanamo Bay Naval Base after the Associated Press sought such information through citing the FOIA.

In 2006, Dayton Daily News obtained governmental documents via the FOIA requests which disclosed that the government largely ignored sexual assault charges brought by women in the military against enlisted men and officers.

In 2006, the Associated Press filed FOIA requests with a dozen federal agencies, to examine the reasons and methods for issuing and collecting administrative penalties. The AP found uncollected fines and other payments of more than $35 billion.

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341 Martin E. Halstuk, Of Secrets and Spies: Strengthening the Public’s Right to Know About the CIA, 17 STANDARD LAW AND POLICY REVIEW 353 (2006).

342 Martha Mendoza & Christopher Sullivan, Billions in Penalties for Wrongdoing Uncollected, THE ASSOCIATED PRESS, March 19, 2006,

In 2008, apparently, military analysts on most U.S. cable television networks were Pentagon appointees directed to generate favorable news coverage of the Bush administration’s wartime performance since September 11, 2001, according to 8,000 pages of e-mail messages, transcripts and records obtained by *The New York Times* after winning a lengthy FOI lawsuit against the Defense Department.  

In 2010, from *The New York Times* FOIA request, the newspaper found that many immigrants died in detention centers, and officials attempted to hide evidence of mistreatment.  

This list is not exhaustive, and largely due to the drawbacks of the U.S. FOI system, American reporters’ willingness to use *FOIA* to obtain information is declining. A study shows that reporters are no longer among the most active seekers of official information.  

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via FOIA. The principal reasons for U.S. journalists not applying greater use of Freedom of Information Act are threefold: First, most reporters work with tight deadlines, but agencies usually fail to comply with FOIA’s time limits, often delaying responses to requests. The uncertainty and lengthiness required to resolve a FOIA lawsuit worsens the situation, and consequently, good stories often become old news by the time the reporters receive the information. According to a recent survey, more than two-thirds of U.S. healthcare reporters claim having stories held or left unpublished because the Food and Drug Administration (FDA) did not respond to FOIA requests in a timely manner.

Unsurprisingly then, the Associated Press criticized the federal FOIA as being “water

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346 SHANNON E. MARTIN, FREEDOM OF INFORMATION: THE NEWS THE MEDIA USE 78 (2008). The four official agencies sampled in this study are General Services Administration (GSA), Environmental Protection Agency (EPA), Department of Transportation and Department of Education. The survey, conducted during January to June 2001, revealed that corporations accounted for 910 requests, while media made only 119 requests. Individuals accounted for 373 queries; lawyers, 567; and nonprofits, 181.

347 Under U.S. FOIA, The maximum response time limit is 30 working days. In other words, within 20 business days after accepting FOIA requests, official agencies must decide if the requested information should be released and immediately notify the requesters of their decisions. The clock of 20-day time limit starts on the day when requests are first received by agencies. In unusual circumstances, the time limits may be extended for up to 10 working days. 5 U.S.C. § 552(a) (6)(A)(i)(2006); Open Government Act of 2007, Pub. L. 110-175, §6, Dec. 31, 2007, 121 Stat. 2524 (2007), codified at 5 U.S.C. A. § 552((a) (6)(A)(2006); 5 U.S.C. § 552((a) (6)(B)(i)(2006). Under exceptional circumstances, FOIA allows news media to receive expedited handling of their requests. 5 U.S.C. § 552(a)(6)(E)(v)(II) (2000) (mandating expedited processing when there is “urgency to inform the public concerning...Federal Government activity” and the request is made by “a person primarily engaged in disseminating information”).

torture. It’s just drip, drip, drip. You wait and you wait and you wait.” Some journalists complain that they never use FOIA because it is “cumbersome, unwieldy, and slow.” In order to meet a deadline, many American reporters have developed alternative methods for securing information withheld by an agency. For instance, reporters seek agencies’ outsiders but those knowing something about the desired information and approving of publication.

Second, governmental officials tend to deny waivers for reporters’ fees. Under FOIA, representatives of the news media enjoy the privilege of paying reduced or even zero processing fees for their requests. However, reporter Donald Goldberg, an investigator for two years for a congressional subcommittee that oversees FOIA matters for all federal agencies, identified a different pattern. “It is their [federal agencies’] policy to deny fee waivers regardless of merit, and it is up to you [reporters] to get that decision overturned.” FOIA processing fees are usually prohibitive.

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obtaining access to governmental documents is so high that many editors abandon FOIA requests and try something else.

Third, misinformation obtained through FOIA requests abound. For example, for U.S. reporters covering deaths of soldiers, FOIA can be a useful weapon since military records are accessible through the Department of Defense. However, the U.S. military often misreports the circumstances of soldiers’ deaths.\textsuperscript{355} The truth is difficult to ascertain, and in this scenario, reporters must combine constant skepticism with old-fashioned reporting. On the topic of soldiers’ deaths, eyewitnesses are far better sources than the information accessed via FOIA requests.\textsuperscript{356}

No matter how discouraged by the faulty FOI system, compared to counterparts in other countries, U.S. journalists still remain known for abilities to open official records using FOI requests and lawsuits. American journalists’ penchant for a substantial role in formulating and strengthening \textit{U.S. FOIA} arises from the long traditions of freedom of expression and freedom of the press. The vigorous use of the freedom of information laws by U.S. journalists has several explanatory factors. The right to access government-held records and documents is a long-established statutory right for American citizens, including members of the press. The media in the United States has an insatiable demand for official information because of an assumed watchdog role. American news organizations enjoy freedom to publish information obtained via FOIA requests and


lawsuits from strong First Amendment protection. The awareness of the law among American reporters is generally high because journalism schools require students to complete mass media law courses.\footnote{Most journalism and mass communication programs at American colleges and universities list mass media law courses, which include freedom of information, as mandatory. For example, Western Illinois University has one of the smallest journalism programs in the country (a total of 7 journalism faculty members in the Department of English and Journalism), but a professor teaches media law courses. Professional organizations in journalism and mass communication keep encouraging U.S. journalism professors to teach freedom of information legal issues. According to Carnegie Media Law For Journalism Schools Task Force Suggestions developed in 2012, “[j]ournalism programs should train and encourage students to utilize Freedom of Information laws and draft Freedom of Information requests. Students should be made aware of the National Freedom of Information Coalition and Reporters Committee for Freedom of the Press and the Student Press Law Center. Also, public universities and whether journalism program records are subject to FOI requests is unresolved and may vary depending upon state FOI law and individual situations.” Taskforce Suggestions, Jschoollegal.org, \url{http://jschoollegal.org/task-force-suggestions/} (last visited November 18, 2012). Task Force Suggestions were distributed in hard copy to the current researcher and many other journalism professors who attended the annual convention of the Association for Education in Journalism and Mass Communication (AEJMC) in Chicago in August 2012.}

Another reason for the frequent use of freedom of information laws among American journalists is unreserved support from editors and media attorneys that advise and represent news organizations on legal matters.\footnote{Hongqing Duan, \textit{How Chinese Media Shall Push Forward Open Government Information} [中国媒体如何推进信息公开], 9 \textit{China Reform} (2011).} David Barstow, the investigative reporter for \textit{The New York Times}, sued the government under the \textit{FOIA} many times, and he has never lost.\footnote{David E. McCraw, \textit{How I Got the Story}, \textit{Columbia Journalism Review}, April 29, 2009, \url{http://www.cjr.org/campaign_desk/how_i_got_the_story_david_mccr.php?page=all} (last visited November 18, 2012). David E. McCraw is a vice president and assistant general counsel for The New York Times Company.} Mark Pittman, an investigative reporter for Bloomberg News, filed an \textit{FOIA} request with the Federal Reserve Board for information detailing the central bank’s
$2 trillion in assistance to collapsing financial firms. He sued the central bank for its failure to disclose information. The lawsuit continued after Pittman died in 2009 and Bloomberg News ultimately won the litigation. These are a few success stories representing many U.S. journalists’ forcing government to be less secretive. These stories would not be possible without unreserved support from editors and media attorneys.

FOI litigation is costly, complex, and time-consuming. Confronting agencies in court is especially difficult for American mainstream news organizations that are struggling financially. American journalists willingly launch legal suits against agencies over FOI issues because some public interest groups provide legal assistance. America has many public interest groups or organizations devoted to assisting journalists with FOI legal issues. For example, Yale University Law School launched Media Freedom and Information Access Practicum (MFIA) in 2010. A team of student practitioners from the MFIA program collaborates with The New York Times for FOI litigation, with the Yale students assisting the newspaper to win a FOI lawsuit, in November 2010. The litigation, filed against the U.S. Treasury Department for non-disclosure of information, concerned names of companies and individuals licensed by Treasury to conduct business with or in


sanctioned nations like Iran and North Korea. Yale Law School covered all the litigation costs. The MFIA students normally handle four to five similar FOI cases each semester. The Citizen Media Law Project at Harvard University provides free legal service to grassroots media and citizen-journalists. The project has a team of 200 media attorneys who may represent citizen-journalists in FOI litigation and other legal confrontations. Many public interest groups, focused on media and not affiliated with universities, have been useful for U.S. reporters who need legal assistance with FOI issues. The Media Law Resource Center, Reporters Committee for Freedom of the Press, the First Amendment Project, Society of Professional Journalists, American Society of News

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Editors,\textsuperscript{370} National Press Club,\textsuperscript{371} The Freedom Forum,\textsuperscript{372} the Sunshine in Government Initiative,\textsuperscript{373} OpenTheGovernment.org,\textsuperscript{374} and the Student Press Law Center\textsuperscript{375} are all such non-profit organizations. Like university-affiliated public interest groups, they have reputations for aiding reporters, at no cost, with issues pertaining to FOI, libel, privacy and many others.

\textbf{Many State Legislatures Used \textit{U.S. FOIA} as a Model}

All 50 U.S. states and the District of Columbia have some kind of open records laws.\textsuperscript{376} This section examines states’ open records laws’ emulation of the federal \textit{FOIA}.\textsuperscript{377} The examination employs categories necessary for transparent government, as identified by international Freedom of information expert, David Banisar: judicial enforcement and applicability to official entities, processes for disclosing information, fees for access and

\begin{itemize}
  \item American Society of News Editors, <\texttt{http://asne.org/}>.\textsuperscript{370}
  \item National Press Club, <\texttt{http://press.org/}>.\textsuperscript{371}
  \item The Freedom Forum, <\texttt{http://www.freedomforum.org/}>.\textsuperscript{372}
  \item Sunshine in Government Initiative, <\texttt{http://www.sunshineingovernment.org/}>.\textsuperscript{373}
  \item OpenTheGovernment.org, <\texttt{http://www.openthegovernment.org/}>.\textsuperscript{374}
  \item The Student Press Law Center, <\texttt{http://www.splc.org/comment.asp}>.\textsuperscript{375}
  \item These laws are accessible through the following websites: The Citizen Access Project, <\texttt{http://www.citizenaccess.org/}>; the Freedom of Information Center at Missouri School of Journalism, <\texttt{http://www.nfoic.org/foi-center/}>; the Brechner Center for Freedom of Information, <\texttt{http://brechner.org/}>.
  \item The subsequent comparison of various U.S. states’ FOI laws with the federal open records law is the result of accessing a freedom of information database on the Open Government Guide website, <\texttt{http://www.rcfp.org/ogg/}> (last visited November 18, 2012).
\end{itemize}
limits for time to respond, procedures for administrative and judicial relief, and conditions and exemptions. 📚

*FOIA*, despite its limitations, has long been a model for similar laws in many U.S. states. As media law scholars, Don Pember and Clay Calvert, stated, “State open-records laws tend to mirror the federal law.” 📚 Almost half of the states now have laws that “closely model” the form adopted by Congress for crafting the Federal FOI law. 📚

Similar to *U.S. FOIA* that was drafted by U.S. Congress, all states’ open-records laws are enactments of legislative branches of states’ governments. The right of access granted by *U.S. FOIA* is a statutory one, not a constitutional one. Most state laws, with a few exceptions, followed this approach, providing information seekers only statutory rights 📚

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to access government-held documents or records. Like the federal freedom of information law, which applies only to the executive branch of the federal government, state open-records statutes normally apply to records held by executive branches of state governments and exclude records of courts and legislatures.

State open records laws, like the federal counterpart, compel states’ and local governments’ agencies to affirmatively disclose some information without the necessity of a request. Most state laws, like the federal statute, allow “any person” the right to inspect public documents with no requirement that the information seeker explains the purpose of the request. Only a few states require requestors of public records to be “citizens of the state.”

All state open records laws, like the federal equivalent, have policies for requesters’ fees for processing state open-records inquiries. Both federal and state laws mandate agencies’ releasing documents or records in a timely manner. The specific amount of fees


386 Such states include Alabama, Arkansas, Delaware, Georgia, New Hampshire, New Jersey, Tennessee and Virginia. However, provisions barring non-residents from making public record requests may be no longer valid today after Lee v. Minner ruled that the restrictions on non-residents’ rights to access public documents were unconstitutional. Lee v. Minner, 458 F. 3d 194 (3d Cir. 2006).
levied and limits to response times vary from state to state. All state laws provide either administrative or judicial relief to resolve a disputed freedom of information request.

Both *U.S. FOIA* and all states’ freedom of information laws have exemption clauses that agencies or courts could use to justify withholding information. As with the federal law, most states assert that all records are presumptively open and then provide exceptions.\(^{387}\) The number of exemptions varies among states,\(^{388}\) and many states’ exemptions do not follow the pattern of the federal Freedom of Information Act. However, all states’ laws and the federal *FOIA* have some common or similar exemptions: information classified as confidential by another state or federal laws (Exemption 3 in *U.S. FOIA*), law enforcement and investigatory information (Exemption 7 in *U.S. FOIA*), trade secrets and commercial information (Exemption 4 in *U.S. FOIA*), preliminary departmental memoranda (working papers) (Exemption 5 in *U.S. FOIA*) and personal privacy information (Exemption 6 in *U.S. FOIA*).\(^{389}\)

Some states follow the federal *FOIA* model so closely that statutory language in their exemptions is nearly identical. For example, *U.S. FOIA* exempts documents that are “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.”\(^{390}\) The Connecticut Freedom of


\(^{388}\) The Connecticut FOI law contains 21 specific exemptions. The *Virginia Freedom of Information Act* includes 100 specific exemptions. Florida’s *Public Records Law* has 200 to 600 statutory exceptions.


Information Act classifies as confidential records that are “personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy.” 391

According to the California Public Records Act, governmental agencies may justify withholding documents that are “personnel, medical or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.” 392

The statutory languages used in the above mentioned three personal privacy exemptions are so similar that any reasonable reader would have difficulty identifying subtle differences among them.

**Summary and Conclusion**

This chapter examines the origins and development of freedom of information laws from a global perspective. As of November 2012, more than 90 countries enacted various forms of laws to protect people’s right to access government-held records and documents. The chapter explores the inception of the world’s first FOI law in Sweden, and the spreading of the concept of freedom of information throughout the world, including the United States, China and Yemen.

This chapter examines four categories of countries with FOI statutes, as identified by other FOI scholars. The first is historical pioneers that passed FOI laws prior to the third wave of democratization in the 1980s. The second is newly emerging democracies that recently departed authoritarian rule. The third is wealthy and well-established democracies, and the last category is countries from the developing world. FOI laws in

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392 California Government Code §§ 6254 (C).
these four types of countries have different characteristics in terms of both statutory language and enforcement.

As for the contributor to formulation of FOI laws and the methods of formulation, apparently, four major patterns and trends appear: Economic development has no direct cause-effect relationship with the presence or absence of FOI laws, and civil society’s journalists and advocacy groups are instrumental in adoption of FOI laws in many countries. Many countries have constitutional provisions on the right to information; whereas, some nations decline to embrace a constitutional right of access. International organizations such as the European Union and the Organization of American States, treaties, conventions, and non-governmental organizations (NGOs) played important roles in creation of many national FOI laws.

This chapter examines the origins and development of freedom of information laws in the United States. The detailed examination is necessary because *U.S. FOIA* is a model for many countries and provides a reference for Chinese FOI law. When Sweden embraced the world’s first freedom of information legislation, Britain continued to enforce its infamous seditious libel laws. The *Housekeeping Statue of 1789* legalized governmental secrecy in the United States. The *Administrative Procedures Act (APA) of 1946* failed to increase official transparency, and after the World War II, especially in the 1950s, people from the legal establishment, the media, and Congress began to agitate for a legal right to obtain governmental information. Among the most prominent figures in the freedom of information movement were James Pope, Harold Cross, James Russell Wiggins and John Moss. *U.S. FOIA* was signed into law in 1966 and several amendments to *FOIA* strengthened the law.
The chapter finds that journalists in the United States are not only enthusiastic promoters of *U.S. FOIA* but also frequent users of the law. They have used information obtained via filing FOI requests to expose official scandals and hold the government accountable. Strong legal protection and ubiquitous legal assistance are among the major reasons for vigorous use of the FOI law in the country. However, many U.S. reporters avoid using *FOIA* today because requesting information via *FOIA* can be slow and costly. In addition, information obtained can be misleading.

This chapter also compares American state-level open records laws with the federal *FOIA* according to five categories: judicial enforcement and applicability to official entities, processes for disclosing information, fees for access and limit to response times, procedures for administrative and judicial relief, and conditions and exemptions. Clearly, despite major differences, states’ open records laws and the federal open records law are strikingly similar. The *U.S. FOIA* and some states’ open records laws use almost the same statutory language for exemption clauses. Such a striking similarity in legal wording is a strong testament to the fact that the federal *FOIA* is a measure for many American states in crafting open-records laws of their own.
Chapter Four: Secrecy and Transparency of the Chinese Government: A Historical Perspective

Introduction

Many observers in the West view China’s passage of the freedom of information legislation with perplexity and suspicion. The puzzle is understandable given that China lacks strong democratic traditions and governmental officials have practiced secrecy for thousands of years. Government secrecy, long embedded in Chinese society, included the widespread inclination of “reporting good, rather than bad news” (baoxi bu baoyou 报喜不 报忧) to deal with crises. However, one should not ignore another side of the same

http://query.nytimes.com/mem/archivefree/pdf?res=9B04E1DB1E31E033A25750C0A96F9C94679ED7CF> (last visited November 18, 2012); Li himself was not hesitant at all in suppressing bad news. In May 1896, Li visited Russia to attend the new emperor’s coronation ceremony. Thousands of spectators were killed or injured due to mass disorder on a square where the ceremony was scheduled. Russia’s prime minister was planning to report the tragedy to the emperor. Li persuaded him not to do so. Li said, according to his political experiences in China, he would not report anything bad to the emperor to make
coin. Chinese leaders, like many other rulers in the world, have long publicized at least portions of their government activities since ancient times. Current Chinese leaders borrowed the idea of transparency not only from Western democracies but also from their own ancient ancestors. Of course, unlike leaders in modern democracies, ancient Chinese rulers employed a certain degree of governmental transparency, not for democratic governance, but for achieving effective and efficient autocracy.

This chapter will examine how both sides of governmental information management—secrecy and disclosure—have evolved in a long tradition of the Chinese civilization. Dynasties in Chinese history are numerous and the scope of this study does not allow for a thorough scrutiny of each dynasty. Thus, the focus and review of government’s informational or communication policies center on four major time periods: Pre-Qin China (2070 BC - 221 BC), imperial China (221 BC – 1912 AD), the Republic of China (1912 AD-1949 AD), and the People’s Republic of China under the leadership of Zedong Mao (1949 AD-1976 AD). For pre-Qin China, this chapter will examine the Xia, Shang and Zhou

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396 In an email interview with Yanbin Lv, a FOI scholar at China Academy of Social Sciences Institute of Law, Lv told the current researcher that he and his colleagues did extensive research on freedom of information systems in the United States, European countries and Japan. They finally produced a draft of *OGI Regulations* (Academic Draft) and submitted it to the State Council for leaders there to consider. He said that foreign legal experts on freedom of information laws also contributed to the making of *OGI Regulations* by offering their own comments to the State Council.

dynasties. For imperial China, the chapter will inspect the Qin, Han, Tang, Song, Ming and Qing dynasties.

This division of time periods is rational because each time period involves different types of government. Slave owners ruled pre-Qin China; emperors ruled imperial China; the Kuomintang (KMT) Party, with an ideological commitment to introduce, gradually, full constitutional democracy, governed the Republic of China most of the time;\textsuperscript{398} and Mao’s China was under the control of communist revolutionaries who temporarily sided with the Soviet Union. All these various forms of government had different ruling ideologies, preached and practiced sometimes sharply divergent policies for handling governmental information. For each time period considered in this study, assessment of governmental secrecy occurs by considering respective rulers’ archiving official documents and records and the laws and codes enacted to guard state secrets and punish violators. Investigation of informational disclosure, if any, explores internal/within the bureaucracy and external/among common people, publicizing of governmental activities.

**Governmental Informational Policy in Pre-Qin China**

1. *The Xia Dynasty (2070 BC-1600 BC) and the Shang Dynasty (1600 BC-1046 BC)*

   Chinese leaders began to realize the importance of storing government documents and maintain their secrecy since the Xia Dynasty, the first dynasty in China.\textsuperscript{399} Xia

\textsuperscript{398} Yangsun Chou & Andrew J. Nathan, *Democratizing Transition in Taiwan*, 27Asian Survey 277, 284 (March 1987).

\textsuperscript{399} To date, no written records from the Xia Dynasty are available. However, written records about the dynasty are not rare.
monarchs appointed astronomers (taishi ling 太史令) to collect and manage important government documents in secure and private places.\textsuperscript{400}

Shang monarchs established China’s first governmental archiving system, preserved in the form of scripts inscribed on oracle bones and containing large volumes of key governmental information.\textsuperscript{401} Royal librarians (shoucang shi 守藏史) had responsibility for collecting and managing these archives. Sacred ancestral temples, guarded 24 hours a day, 365 days a year, were the storehouses for important government documents and files and accessible only to an extremely limited number of people like kings and high officials.

During the two dynasties of Xia and Shang, no recorded instances of proactively disseminating government information exist, even among central and local bureaucrats. The two dynasties produced various forms of laws but they were not made publicly

\textsuperscript{400} Gu Zhong was an astronomer during the reign of the last monarch of Xia. Zhong tried to persuade the ruler to practice benevolent governance, but he failed. During the petition, he let the king see all the archived governmental documents. He was so emotional that tears came streaming down his face. Seeing that his persuasion had no effect, Zhong finally defected to Shang and brought all Xia documents with him [夏太史令终古出其图法，执而泣之。夏桀迷惑，暴愈甚，太史令终古乃出奔如商]. The Gu Zhong story originally appears in Lv’s Commentaries of History, an ancient Chinese classic compiled by Buwei Lv, the prime minister of the state of Qin. Lv’s Commentaries of History [呂氏春秋] (Buwei Lv ed., Foreign Languages Press, 2010) (239 BC). For relevant scholarly article about the episode, see Wenying Liu, An Evaluation of History of Chinese Archives [中国档案事业发展史探析], 1 Journal of Sichuan Cultural Relic 66 (2002).

available. Rulers during this time believed that published laws had less power to deter undesirable activity than unpublished ones.

2. The Western Zhou Dynasty (1046 BC–771 BC) and the Eastern Zhou Dynasty (771 BC–256 BC)

The Zhou Dynasty continued the Shang tradition of archiving important records as engravings on animal bones, bronze wares, or bamboo slips. During the Western Zhou period, the royal archival institution (tianfu 天府) archived all original copies of official documents and national treasures. Royal librarians (shoucangshi shi 守藏室史) had responsibility to oversee, properly, the maintenance and secrecy of all archived documents. Laozi, the legendary Taoist philosopher, was once such a keeper of archival records at the court of Zhou.

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402 The law in the Xia Dynasty was Yu Xing [禹刑]. As a customary law, Yu Xing was unwritten and unpublished. The law in the Shang Dynasty was Tang Xing [汤刑]. Tang Xing was also unpublished. Yujun Feng, Legal Culture in China: A Comparison to Western Law, 15 NZACL YEARBOOK (2009).


405 During the Western Zhou Dynasty, six government offices at the court of Zhou existed: Ministry of Heaven, Ministry of Earth, Ministry of Spring, Ministry of Summer, Ministry of Autumn, and Ministry of Winter. The keeper of imperial archival records was the 9th ranked official in the Ministry of Spring (Rites). Heiner Fruehauf, The Science of Symbols Exploring a Forgotten Gateway to Chinese Medicine, 69 JOURNAL OF CHINESE MEDICINE 23 (June 2002).

As the Zhou bureaucracy grew in size, scope and complexity, internal/organizational communication among central and local bureaucrats expanded rapidly. Consequently, kings of Zhou created a comprehensive system to ensure confidentiality. When administrators transmitted a confidential document, they wrote horizontally on three bundled bamboo-writing slips held together by a chord. Upon completion, each slip had only one third of the whole document. Bureaucrats then separated the three slips and had each of them delivered in a sealed box by a different courier to the addressee. In so doing, officials had peace of mind that the addressee would not have the full document until he received all three slips. This methodology drastically reduced the likelihood of leaking government secrets.\(^{407}\) As a standard practice, the Zhou kings authorized their prime ministers to handle all confidential government documents.

Unlike sovereigns in the Xia and Shang dynasties, supreme leaders in the Zhou Dynasty realized that governmental secrecy and certain degree of transparency could cooperate to increase stability and prosperity. Kings of this period created China’s first postal system to facilitate freer flow of information within the bureaucracy. Courier stations, established along major routes of transportation across the empire, used manpower, horses, carriages, and ships to deliver official documents on a regular basis. The prime minister was responsible for courier stations, and the Ministry of Military Affairs ensured secure transmission of urgent official documents. The establishment of this system

allowed internal/organizational communication between the Zhou court and regional nobles.408

Zhou kings and regional warlords occasionally declassified certain official papers and announced directives in public decrees and government orders.409 Governmental officials also wrote decrees or royal orders on wooden boards, bamboo slips, or silk tissues and hung them high in front of the palace gates for all to see.410 These were the earliest recorded instances of the ancient Chinese government’s systematically and proactively disclosing official information to the public.

The urgent issue was the degree of official information that should be kept secret and the amount appropriately shared with local officials and even the populace. This issue was hotly debated among philosophers from “Hundred Schools of Thought” that flourished from the Spring and Autumn Period (771 BC-476 BC) to the Warring States Period (475 BC-221 BC). During this era, the power of Zhou kings was in decline, regional warlords defied

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410 Cited from Rites of Zhou. Rites of Zhou [周礼] (Xuan Qian, Xingqi Qian, Huabao Wang & Binghong Xie translated and annotated, 2001). For relevant literature, see Chunping Huang, Information Dissemination Methods in Han Dynasty [汉代信息发布手段探析], 18 (3) Journal of Zhejiang Institute of Media and Communications 7, 9 (June 2011).
the court and called themselves kings as well.\textsuperscript{411} Contentions among Confucianism,\textsuperscript{412} Taoism,\textsuperscript{413} Mohism\textsuperscript{414} and Legalism\textsuperscript{415} are especially worth noting because these four ancient philosophies have profoundly influenced later generations of political leaders, including today’s Chinese rulers.\textsuperscript{416}


\textsuperscript{412} Confucianism (\textit{Rujia; 儒家; “School of Scholars”}) was the dominant ideology of the Chinese government for all imperial dynasties except the Qin Dynasty. It emphasized the importance of moral virtues including altruism, righteousness, propriety, loyalty and filial piety. For more information about Confucianism, see Xinzong Yao, \textit{An Introduction to Confucianism} (2000); Ronnie Littlejohn, \textit{Confucianism: An Introduction} (2011).

\textsuperscript{413} Taoism or Daoism (\textit{Daojia; 道家; “School of the Way”}) never became the dominant ideology of the imperial Chinese government except in the early Western Han Dynasty. It was a philosophy of ancient Chinese scholars at leisure or in retirement or political wilderness. It focused on individuals’ living in harmony with the Tao, the essence and source of the natural and even the supernatural universe. For more information about Taoism, see Isabelle Robinet, \textit{Taoism: Growth of a Religion} (1997); Russell Kirkland, \textit{Taoism: The Enduring Tradition} (2004); Holmes Welch, \textit{Taoism: The Parting of the Way} (1966); Jennifer Oldstone, \textit{Taoism: Origins, Beliefs, Practices, Holy Texts, Sacred Places} (2003).

\textsuperscript{414} Mohism or Moism (\textit{Mojia; 墨家; “School of Mo”}) did not survive through the Qin Dynasty because of the ruling class suppression. It advocated universal love (“everyone is equal before heaven”), equality, nonaggression, frugality and the use of experimental methods to discover the truth of nature. For more information about Mohism, see Xing Lu, \textit{Conceptualization of Ming Bian: The School of Mohism, in Rhetoric in Ancient China, Fifth to Third Century, B.C.E.: A Comparison with Classical Greek Rhetoric} (1998).

\textsuperscript{415} Legalism (\textit{Fajia; 法家; “School of Law”}) was the dominant ruling ideology of the Qin Dynasty. It held a cynical view of human nature and preached using severe penalties and high rewards to regiment society for the goal of strengthening the power of the states. For more information about Legalism, see Wing-tsit Chan, \textit{Legalism, in A Source Book in Chinese Philosophy 251-60} (1963); Charles O. Hucker, \textit{China’s Imperial Past: An Introduction to Chinese History and Culture} 92-95 (1995).

\textsuperscript{416} In addition to Confucianism, Taoism, Mohism and Legalism, many other less well-known schools of thought flourished during the Spring and Autumn Period and the Warring States Period. For example, School of Naturalists (\textit{Yin-Yangjia 阴阳家, “School of Yin-Yang”},
Mencius, or Mengzi, refined Confucianism whose founder was Confucius, or Kongzi. Confucius and Mencius were among the first ancient Chinese philosophers who indirectly considered the subject of governmental information, and these two masters believed that individual rights were inferior to collective rights, thereby supporting the loyalty of the governed to the governor, as long as the latter is virtuous. Based on this rationale, Confucius said, "The people may be made to follow a path of action, but they may not be made to understand it (minkeshiyouzhi bukeshizhizhi 民可使由之 不可使知之)." In other words, Confucius suggested that the ruler should allow his people to obey rather than informing them or having knowledge. Confucius said that anyone working in the

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Logicians (Mingjia 名家; “School of Names”), School of Diplomacy (Zonghengjia 纵横家, “School of Vertical and Horizontal Alliances”), Miscellaneous School (Zajia 杂家), School of "Minor-talks" (Xiaoshuojia 小说家), School of Agriculturalist (Nongjia 农家), School of the Military (Bingjia 兵家). An analysis of the relationship between freedom of information and those schools of thought is beyond the scope of this study.


418 This rendition is the most popular way of interpreting and translating this quote. However, conflicting interpretations abound due to the lack of a system of punctuation in ancient Chinese literature. For English translation of the original quote, refer to the Chinese Text Project, a web-based e-text system designed to present ancient Chinese texts, particularly those relating to Chinese philosophy, in a bilingual, well-structured and properly cross-referenced manner, making the most of the electronic medium to aid in the study and understanding of these texts, available at <http://ctext.org/analects/tai-bo> (last visited November 18, 2012). For the original Chinese text, see TAeko Brooks, THE ORIGINAL ANALECTS: SAYINGS OF CONFUCIUS AND HIS SUCCESSORS (1998).
bureaucracy should speak prudently to avoid accusation. When discussing the rationale for governors’ always guarding against leaking information, Confucius stated:

When disorder arises, it will be found that ill-advised speech was the stepping-stone to it. If a ruler does not keep secret [his deliberations with his minister], he will lose that minister. If a minister does not keep secret [his deliberations with his ruler], he will lose his life. If [important] matters in the germ be not kept secret, that will be injurious to their accomplishment. Therefore the superior man is careful to maintain secrecy, and does not allow himself to speak.

Similar to Confucius and his disciples, Laozi, Zhuangzi and their Taoist followers were opponents of governmental transparency, although probably to a lesser degree. Taoist philosophers argued for governors to avoid interfering with the governed. If people lack knowledge and desire, then they cannot act. If no action occurs, harmony remains. If rulers abolish knowledge and wisdom, people profit. If rulers use law to control a nation, the nation weakens. If rulers use nature to control a nation, the nation strengthens. Laozi said, “The ancient followers of Tao did not use it to increase knowledge, but rather to preserve simplicity. People are difficult to govern when there is too much knowledge.

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421 For more similar statements, see Chinese Text Project, <http://ctext.org/daoism> (last visited November 18, 2012).
Whoever rules a country by furthering knowledge is that nation’s curse.” For Taoists, the best political communication is no communication at all. Zhuangzi summarized his anti-transparency predilection in an eloquent statement:

Fish should not be taken from [the protection of] the deep waters; the agencies for the profit of a state should not be shown to men. But those sages [and their teachings] are the agencies for the profit of the world, and should not be exhibited to it (emphasis added).

In a sharp contrast to Confucianism and Taoism, Mohism adopted a vastly different approach to politics and official information. Although Mozi, the founder of Mohism, did not explicitly discuss the issue of transparency in his writings, he was arguably one of the most pro-democracy philosophers during his era. Mozi was a robust supporter of selecting governmental officials (including the sovereign king) by virtue and merit rather than by heritage and family connections. He condemned the system of inherited governmental power. In a sharp contrast, none of his contemporary thinkers questioned the morality of primogeniture. When explaining the appointment of officials, Mozi stated bluntly:

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422 For more similar statements, see Chinese Text Project, <http://ctext.org/daoism> (last visited November 18, 2012).

423 Xiaoli Yu, Study on Taoist Concept of Communication [反传播还是愚民政策?, 试论道家的传播观], 97 JOURNAL OF FUYANG TEACHERS COLLEGE (Social Science) (2004).


425 As a scholar stated, “If Confucianism is the most influential school of thought with regard to Chinese culture and political systems, Mohism is the school most resembling Western logical, religious and ethical systems.” Xing Lu, Conceptualization of Ming Bian: The School of Mohism, in RHETORIC IN ANCIENT CHINA, FIFTH TO THIRD CENTURY, B.C.E.: A COMPARISON WITH CLASSICAL GREEK RHETORIC 195-96 (1998).
Thereupon Heaven wished to unify the standards in the world. The virtuous was selected and made emperor. Conscious of the insufficiency of his power alone to govern the empire, the emperor chose the next best [in virtue and wisdom] and honored them to be the three ministers. ... [T]he three ministers in turn divided the empire into feudal states and assigned them to feudal lords. ... [T]he feudal lord in turn selected his next best and commissioned them ministers and secretaries. ... [T]he ministers and secretaries again selected their next best and appointed them district heads and clan patriarchs.426

Mozi did not explicitly talk about the advantages and disadvantages of disclosing government information. However, from his people-based approach to governance, inferring that Mozi believed in the value of transparency is not difficult. An ideal government, according to the Mohism, is one in which constant, effective and efficient sharing of information occurs between the governor and the governed. Otherwise, selecting the sovereign, other officeholders and the “next best in virtue and wisdom” is impossible.427 According to Mozi, the management of an ideal government would naturally answer “the desires of the people”;428 the success and failure of government policies becomes easily verifiable “by the senses of hearing and sight of the common people.”429


Unlike Mohism, Legalism unequivocally embraced the value of disseminating information pertaining to laws and regulations. Legalist pioneer, Zhong Guan, once the prime minister of the Qi state, made the state much stronger. Guan stressed that potentates should often publicly worship mountains and pay respects to ancestral temples. Doing this would guarantee that the common people in the state follow the moral principles of propriety and piety. As the prime minister of the Zheng state, Zichan did something more substantial and revolutionary than Guan in terms of governmental disclosure of information. In 536 BC, Zichan discarded the tradition of keeping laws secret, a cherished tradition of ancient Chinese monarchs for thousands of years. He engraved the full text of a criminal code on a bronze tripod vessel (zhuxingding) and made it public. This is the first, public statutory law in ancient China.

The noble class fiercely opposed the publication of the law, insisting that any mean person could now dispute with the judge, based on single terms or even a single Chinese character in the law. A political opponent in the government stated indignantly in a personal letter to Zichan:

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430 Chi Zhang, Preliminary Analysis of Legalist Communication Thought in Pre-Qin Period [先秦法家传播思想述论], 21 (3) Journal of Anqing Teachers College (Social Science Edition) (2002).

At first I considered you [as my model], but now I have ceased to do so. The ancient kings deliberated on [all the circumstances], and determined [on the punishment of crimes]; they did not make [general] laws of punishment, fearing lest it should give rise to a contentious spirit among the people... *When the people know what the exact laws are, they do not stand in awe of their superiors.* They also come to have a contentious spirit, and make their appeal to the express words, hoping peradventure to be successful in their argument. *They can no longer be managed* (emphasis added).\(^{432}\)

Zichan confronted the opposition unwaveringly and responded, “I cannot accept your instructions, but I dare not forget your great kindness.”\(^{433}\) He reasoned that making the law public could ensure fairness and transparency of justice.\(^{434}\) Zichan maintained a reputation for respecting public opinion. One day, someone proposed destroying all the village schools in the state of Zheng because many civilians gathered there to critique the conduct of the government.\(^{435}\) Zichan responded:

> Why do so? If people retire morning and evening, and pass their judgment on the conduct of the government, as being good or bad, I will do what they approve of, and I will alter what they condemn;—they are my teachers. On what ground should we destroy [those schools]? I have heard that by loyal

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\(^{434}\) Chi Zhang, *Preliminary Analysis of Legalist Communication Thought in Pre-Qin Period* [先秦法家传播思想述论], 21 (3) *Journal of Anqing Teachers College* (Social Science Edition) (2002).

conduct and goodness enmity is diminished, but I have not heard that it can be prevented by acts of violence. It may indeed be hastily stayed for a while, but it continues like a stream that has been dammed up. If you make a great opening in the dam, there will be great injury done—beyond our power to relieve. The best plan is to lead the water off by a small opening. [In this case] our best plan is to hear what is said, and use it as a medicine.436

Zichan’s notion of a transparent and accountable justice system and his close attention to public sentiment inspired one of his Legalist followers, Shang (Gongsun) Yang. As the prime minister of the State of Qin during the Warring States Period, Shang created a large variety of harsh laws and regulations. He believed strongly in the necessity and value of making those laws widely known.437 When elaborating his overall strategy of making Qin strong, Shang stated openly:

[T]here shall be no one among the government officials and people of the empire who does not know the law, and as the officials are clearly aware that the people know the laws and mandates, they dare not treat the people contrary to the law nor dare the people transgress the law, as they would come into conflict with the law officers.438


437 Shang Yang did not realize that he himself would become the victim of government transparency. Shang fled to a small countryside hotel when the new king of Qin decided to kill him for revenge. When Shang begged the hotel owner to let him stay, the hotel owner declined because he knew doing so was against Shang’s law to admit a guest without proper identification. QIAN SIMA, RECORDS OF THE GRAND HISTORIAN: SHANG YANG 68 (Burton Watson (Trans., Columbia University Press, 1993).

In order to warrant a legal system in which everybody knew all the laws, Shang Yang stressed that laws and rules should be made easy to understand. He said emphatically:

[O]ne should not make laws so that only the intelligent can understand them, for the people are not all intelligent; and one should not make laws so that only the men of talent can understand them, for the people are not all talented. Therefore did the sages, in creating laws, make them clear and easy to understand, and the terminology correct, so that stupid and wise without exception could understand them.439

Shang Yang believed that making laws transparent and public could have one big advantage: if the common people had basic knowledge about the laws, they would be able to identify official who fails to follow proper procedures and then they could report him to his superiors for punishment. Official malfeasance would thus be curbed.440

Another Legalist, Han Fei, extended Shang Yang’s promotion of legal transparency by asserting that laws were inherently transparent (fa mo wei xian 法莫为显). He defined law as a set of rules and guidelines created by the government, codified in books and documents, and made known to the rank and file.441

Legalism was the only ancient Chinese school of thought that unambiguously expressed the issue of disclosing governmental information. Legalists were stalwart


441 Cited from the original Chinese text [法者，编著之图籍，设之于官府，而布之于百姓者也]. For more relevant statements, see FEI Tzu HAN, HAN FEI Tzu: BASIC WRITINGS (Burton Watson trans., Columbia University Press, 1964).
proponents of judicial transparency; however, notably Legalism was highly restrictive toward disseminating information that was anti-Legalist.\[442\]

What is more important, Legalists drew clear boundaries for limits on official transparency. They supported wide advertisement of laws and regulations but resolutely supported secrecy for all other official matters. Han Fei, who deeply influenced Chinese emperors for many generations, regarded secrecy as a matter of life and death for rulers. Han argued that successful sovereigns were able to create an image of secrecy and mystery among his subjects and commoners (shu bu yu xian术不欲见).\[443\] When talking about how rulers should lead the country, Han stated straightforwardly:

Therefore, the sovereign, when enforcing regulations, is as magnificent as heaven, and, when using men, is as mysterious as the spirit. For heaven cannot be confuted and the spirit cannot be harassed by human beings. ...The lord of men has the duty of devoting his attention to secrecy. For this reason, when his delight is revealed, his conduct will be slighted; when his anger is revealed, his prestige will fall to the ground. The words of the intelligent sovereign, therefore, are blockaded in such wise that they are not communicable outwards and are kept in such secrecy that they are unknowable (emphasis added).\[444\]

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\[442\] Chi Zhang, *Preliminary Analysis of Legalist Communication Thought in Pre-Qin Period* [先秦法家传播思想述论], 21 (3) *Journal of Anqing Teachers College (Social Science Edition)* (2002).

\[443\] Quoted from the English translation on the University of Virginia website, <http://www2.iath.virginia.edu/saxon/servlet/SaxonServlet?source=xwomen/texts/hanfei.xml&style=xwomen/xsl/dynaxml.xsl&chunk.id=d2.48&toc.depth=1&toc.id=d2.20&doc.lang=bilingual> (last last visited November 18, 2012). For the full text of Feizi Han’s writings, see *Fei Tzu Han, Han Fei Tzu: Basic Writings* (Burton Watson trans., Columbia University Press, 1964).

\[444\] Quoted from the English translation on the University of Virginia website, <http://www2.iath.virginia.edu/saxon/servlet/SaxonServlet?source=xwomen/texts/hanfei.xml&style=xwomen/xsl/dynaxml.xsl&chunk.id=d2.48&toc.depth=1&toc.id=d2.20&doc.lang=bilingual> (last last visited November 18, 2012). For the full text of Feizi Han’s writings, see *Fei Tzu Han, Han Fei Tzu: Basic Writings* (Burton Watson trans., Columbia University Press, 1964).
Governmental Informational Policies in Imperial China

1. The Qin Dynasty (221 BC-206 BC)

The Qin Dynasty united China in 221 BC and created a centralized bureaucratic government. Qing Shi Huang, the first emperor in Chinese history, adopted Legalism as the official government philosophy and suppressed all other philosophic schools including Confucianism and Mohism by burying alive hundreds of non-Legalist scholars and burning books of non-Legalist philosophical viewpoints and intellectual subjects.\footnote{445}{1 The Cambridge History of China: The Ch'in and Han Empires, 221 B.C. - A.D. 220 (Denis Crispin Twitchett, Michael Loewe & John King Fairbank eds., 1986).}

Rulers in the Qin Dynasty made large volumes of laws and regulations, and publicized\footnote{446}{For what motivated the rulers of the Qin Dynasty to publicize laws and how those legal codes were made known among the commoners, see Charles Sanft, Law and Communication in Qin and Western Han China, 53 Journal of the Economic and Social History of the Orient 679, 679-11 (2010).} them (not surprisingly) through a “vertical information communication system,”\footnote{447}{Qinglin Li, The Constitution and Narrative of Imperial Autocracy-on the Discourse and the Mode of Communication in Imperial China [皇权专制的建构和叙事] (2006) (Ph.D. dissertation, the Communication University of China (on file with author), at 44.} originating from the central level and extending to the prefecture and county levels. Such a communication system was possible through building roads connecting major cities across the country and linking with the capital Xianyang.\footnote{448}{Ying Zou, Postal System and Communication in Ancient China [中国古代邮驿制度与传播], 23(4) Journal of Xianning College 99 (2003).} According to the laws at the time, archiving and managing all important official documents and records were
yushi daifu (御史大夫), the vice minister who supervised all officials in the country. Execution was the penalty for any individual, according to the Qin laws, who leaked classified official documents or other government secrets.

If ignoring publication of laws, then a safe conclusion is that a cloak of secrecy shrouded the whole empire. Two incidents illustrate the government’s extreme clandestineness: The first concerns the Legalist promoter Li Si who, when young, was an ambitious minor functionary. When Li became the influential prime minister of Qin, he enjoyed huge fanfare with his convoy whenever he was on inspection tours. One day when seeing Li’s ostentatious convoy, the supreme leader Qin Shi Huang felt affronted and said something critical about the prime minister’s pomposity. Secretly, reports conveyed the emperor’s remarks to Li, and subsequently, when the supreme leader saw Li’s convoy, it had become more modest and restrained. Qin Shi Huang realized his eunuchs must have divulged the statements, and the sovereign launched an investigation that yielded no results. Finally, the ruthless ruler executed all the eunuchs who had been present on the day of his remarks. By doing this, the monarch made sure that no one would dare to leak information again.

Another tragic incident of official secrecy changed the course of Chinese history. When Qin Shi Huang died suddenly on an inspection tour, the news remained secret for


450 Eunuchs were men who were castrated, usually as children, and used in many ancient Asian and Middle Eastern courts to help ensure their loyalty as servants, minor governmental functionaries and as harem guards.

many days. Carts containing rotten fish prevented people from noticing the foul smell of the emperor’s body, which was decomposing quickly in the summertime heat. By delaying announcement of the death, Li Si and a few other high officials staged a successful coup d’état. They falsified the imperial decree, forced the eldest son of the emperor to commit suicide, and helped another son rise to the throne.  

2. The Han Dynasty (206 BC–220 AD)

The Qin Dynasty lasted no more than two decades. When Qin quickly collapsed, the replacement was the Han Dynasty. Since Legalism had a poor reputation in the Qin Dynasty for being excessively cruel and merciless, Han rulers adopted significantly revised imperial Confucianism as the official state philosophy, as did most other successive dynasties.

“Dismiss the hundred schools, revere only the Confucian (bachu baijia duzun rushu)”, according to a Chinese proverb.

As mentioned earlier, Confucius and his followers deemphasized the value of disseminating government information, and unsurprisingly, Han established a highly secretive government, which hoarded official documents in ancestral temples (zongmiao).

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454 The traditional Confucianism that flourished during the Zhou Dynasty was revised by the Han scholar Dong Zhongshu. Dong integrated Legalism, Moism, School of Yin-Yang and many other philosophies into the new Confucianism. Robin R. Wang, Dong Zhongshu’s Transformation of "Yin-Yang" Theory and Contesting of Gender Identity, 55 PHILOSOPHY EAST AND WEST 209, 209-31 (April 2005).

455 XINZHONG YAO, AN INTRODUCTION TO CONFUCIANISM 83 (2000).
Those documents were carefully guarded by a government functionary responsible for the imperial library (lantai lingshi 兰台令史). Similar to documents, emperors’ health conditions were state secrets. Liu Bang, the first emperor of Han, died in his palace but the empress made no announcement until four days afterward. The delay was the consequence of a failed attempt to kill all the generals who helped Liu Bang’s ascension to the throne.

Leaking highly confidential official information like the death of an emperor was a felony. Violators and their family members could face execution. Even divulging less sensitive information could result in catastrophic consequences. During the reign of Emperor Yuan, a county magistrate faced accusations of killing innocent people. The emperor heard the case in secret. The magistrate’s friend, who was an assistant minister of justice at the court of Han, reported the accusation to Zhu before the emperor rendered a verdict. Following the minister’s suggestion, the magistrate wrote a self-criticizing letter to the emperor to seek sympathy, resulting in the minister’s arrest for leaking the “inside information (xielou shengzhong yu 漏泄省中语).” In another development, Emperor

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Yuan planned to kill General of Chariots and Cavalry Zhang Anshi. In a private conversation, the royal instructor persuaded the emperor to reconsider the assassination. Zhang Anshi’s son made this conversation public while drinking with colleagues, and ultimately committed suicide from fear of punishment.\(^{459}\)

Since the court of Han penalized numerous officials for leaking state secrets, for self-protection, bureaucrats followed a set of precautionary measures. For example, officials in key decision-making positions always remained silent in public.\(^{460}\) Functionaries preferred to write confidential messages under seal rather than convey oral messages, which they felt to be less secure. Administrators handling confidential matters would not conduct business at home nor would they allow family visits to their offices.

Government secrecy, however, did not eliminate internal communication among officials at various levels. On the contrary, the court of Han developed the internal communication system within the bureaucracy. Information flow among bureaucrats

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\(^{460}\) Kong Guang was a model official in guarding government secrets. As the Chief of Secretariat at the court of Emperor Cheng, Kong was the custodian of all confidential official information. However, whenever he visited his hometown and chatted with his family and relatives, Kong was sufficiently cautious and secretive to avoid a mention of his duties. Someone curious asked Kong what kinds of trees grew in the royal court in the capital, Chang’an. Kong did not respond to this inquiry; instead, he remained silent for a while and digressed to another subject. Yan Xia, *Government Secret Leaking and Protection in Ancient China* [古代官场的泄密与保密], *Journal of Reporter’s Notes* (2011). The Kong Guang story appears in *Book of Han* [汉书] (Last visited November 18, 2012). For more information about this episode, see Gu Ban, *Book of Han* [汉书] (Shugu Yan Annotated, Zhonghua Press, 2000) (83 AD).
throughout the country was frequent and vibrant. Official documents constantly disseminated by couriers who occupied nearly 30,000 stage-houses built along major postal roads, running as long as 32,000 kilometers in total. The responsibility of one of nine ministers at Han’s court was proper functioning of this gigantic communication system.\footnote{Ying Zou, \textit{Postal System and Communication in Ancient China} [中国古代邮驿制度与传播], 23(4) \textit{Journal of Xianning College} 99 (2003).}

External communication between the Han bureaucracy and commoners remained limited because Confucianism discouraged proactive disclosure of official activities and Legalism also convinced monarchs to practice secrecy. However, Han emperors followed the Legalist practice of publicizing government orders, announcements and laws.\footnote{Although Legalism ceased to be an independent school of thought since the Han Dynasty, it still played a major role in government. Legalist ideas merged with the mainstream Confucianism. Imperial rulers since the Han Dynasty used the Confucian exterior to unify people’s minds and mediate the harsh Legalist regimentation of people’s behavior. Some scholars termed this governing approach “externally Confucian, internally Legalist” [外儒内法 儒表法里]. \textit{WIEBKE DENECKE}, \textit{The Dynamics of Masters Literature: Early Chinese Thought from Confucius to Han Feizi} (2011); \textit{XINZHONG YAO}, \textit{An Introduction to Confucianism} (2000).}

Without the modern luxury of telephones, cables, newspapers, magazines, radio, television and the Internet, Han governmental officials adopted four methods to ensure that newly announced royal orders and recently codified laws reached maximum exposure in the empire.\footnote{Chunping Huang, \textit{Information Dissemination Methods in Han Dynasty} [汉代信息发布手段探析], 18 (3) \textit{Journal of Zhejiang Institute of Media and Communications} 7, 7-11 (June 2011); Chunping Huang, \textit{Release of News in Han Dynasty-Looked from the Aspect of Material of Bamboo Slips} [从出土简牍看汉帝国中央的信息发布], 4 \textit{Journal of Journalism \\& Communication} (2006); Charles Sanft, \textit{Law and Communication in Qin and Western Han China}, 53 \textit{Journal of the Economic and Social History of the Orient} 679 (2010).}
The first method of information dissemination was *shubi* (书壁), writing down the information on buildings’ walls in conspicuous places for everyone to see. The second approach *guabi* (挂壁) was copying official information onto wooden boards or silk and hanging these objects in highly visible places.464

*Xuanjiang* (宣讲) was another approach for disclosing information. Government officials would meet with people on the streets or conduct door-to-door outreach to ordinary people in a jurisdiction. During the face-to-face encounter, the officers would announce, interpret or even read word by word some government documents. Han’s officials became increasingly involved in the writing styles of documents.465 The advantage of having an interpersonal communication between officials and their subjects was significant: Bureaucrats could explain governmental policies and have immediate feedback. The fourth method was *chuanyue* (传阅), meaning some public-intended official documents

464 Following the Zhou Dynasty tradition, Han rulers built watchtowers on either side of their palace gates and designated these buildings as places of public announcement. Public declarations and newly passed laws occupied noticeboards for the public to see. According to the law, in order to show respect for such an imperially designated area, people riding carriages should immediately dismount and walk, and pedestrians should walk by quickly [车过者下 步过者趋]. Quoted and translated from Guoxue.com, <http://www.guoxue123.com/jijijibu/0201/00qhhw/index.htm> (last visited November 18, 2012). For more information about the use of palace gates as places of public announcements, see YE FAN, BOOK OF LATER HAN [后汉书] (Zhejiang Ancient Books Publishing House, 2000) (432 AD).

465 Shuya Wang, *Evolution of Writing Style of Official Documents from Pre-Qin to Han Dynasty* [试论先秦到汉代的公文文气演变], 2 *JOURNAL OF DATA OF CULTURE AND EDUCATION* 223 (June 2010).
would neither be bundled nor sealed. They would be displayed in conspicuous places for all common people to read.466

3. The Tang Dynasty (618 AD–907 AD)

Both official secrecy and transparency developed in the Tang Dynasty, one of the most powerful dynasties in China’s history. Rulers created a comprehensive and multifaceted system for dealing with official documents and archives, and laws on guarding state secrets became more and more detailed and harsh. Conversely, the inception of the court gazette made possible wide sharing of official information among central and local government agencies.

Unlike rulers of the Qin and Han dynasties, those of the Tang Dynasty established a nationwide archival system. Regional and carefully preserved archived documents,467 including documents of foreign intelligence, war expeditions, domestic rebellions and other military and public security issues, were highly confidential.468 According to the Tang Code (唐律),469 anyone leaking such information could face a wide variety of penalties

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466 Chunping Huang, Information Dissemination Methods in Han Dynasty [汉代信息发布手段探析], 18 (3) JOURNAL OF ZHEJIANG INSTITUTE OF MEDIA AND COMMUNICATIONS 7, 7-11 (June 2011).


469 The Tang Code was a penal code combining Legalist and Confucian interpretations of law and became a model for later penal codes in China and other countries in East Asia. For
ranging from caning, demotion, deposition, imprisonment, hanging, decapitation, and family deportation, depending upon the severity of the crimes. Anyone who stole and/or opened sealed documents without proper authorization would face similar penalties.

Restrictions on access to confidential information were not uncommon; however, the birth of “Dibao” (邸报, 进奏院状), the first newspaper in China, in fact the world, made information flow in the Tang bureaucracy smoother and more efficient. Officials from the Di (邸), liaison offices of local governments in the capital of Chang’an, gathered information from the court and various central agencies, then regularly compiled and published such information in a newspaper-like document. Officeholders in the capital and more scholarly discussions of the Tang Code, see Jacques Gernet, A History of Chinese Civilization 801 (1996); 1 The Tang Code: General Principles (Wallace Johnson, trans., 1979).


471 Two original copies of the Tang Dibao were discovered in 1900 in the Mogao Caves of Gansu Province. Some scholars argued that the first publication of Dibao was during the Han Dynasty, but no archeological evidence supports this contention. Barbara Mittler, A Newspaper for China?: Power, Identity and Change in Shanghai’s News Media, 1872-1912 177 (2004); Fen Zhao, Comparing Official Gazettes with Short Reports in Ancient China [中国古代官报与小报的比较], 3 JOURNAL OF YOUTH JOURNALIST (2010). Most Chinese scholars studying origins of Chinese newspapers maintained that categorizing the Dibao as one type of newspaper is appropriate. Hanqi Fang of Renmin University of China is one of them. Hanqi Fang, A History of Chinese Journalism [中国新闻事业通史] (1992). But a few other Chinese scholars such as Jitian Liao disagreed. Jitian Liao, Is Dibao Ancient Newspaper? Reexamination of Evolution of Ancient Chinese Newspapers [邸报是古代报纸吗? 中国古代报纸发展线索再梳理], 1 JOURNAL OF JOURNALISM & COMMUNICATION 12, 12-20 (2010).
provincial commanders\textsuperscript{472} received the periodicals through a highly developed postal system.\textsuperscript{473}

The newspaper focused on imperial activities and decrees, official policies, regulations, official promotions, demotions, and even military and political intelligence. Although the central government had no involvement in the production and circulation of the publication, the \textit{Dibao} was functionally the official court gazette and allowed no access to anyone outside the government.

Tang emperors further developed the system of imperial censorate, a supervisory central agency responsible for preventing corruption and malfeasance. The agency consisted of junior officials who excelled at national civil service examinations. Promotion was possible for them if they worked diligently or corrected governmental wrongs.\textsuperscript{474} Those highly educated remonstrators’ duties including identifying officials’ misdeeds by constantly recording official decisions and correspondence and criticizing officials, even

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\textsuperscript{472} Lizi Liu, \textit{Study of Dibao and Government Information Dissemination in Ancient China} \textsuperscript{[浅谈邸报与我国古代政务信息的公布]}, 7 \textit{JOURNAL OF LANTAI WORLD} 49, 49-50 (2009).

\textsuperscript{473} A Tang poem expressed efficiency of the Tang postal system: “One courier station after another, the courier horse runs like a shooting star. At dawn it departs in Xianyang. At dusk, it arrives in Long Mountain.” [一驿过一驿， 驿骑如星流。平明发咸阳，暮及陇山头] (Xianyang is more than 124 miles from Long Mountain). In 755 AD, the general and regional commander An Lushan rebelled against the Tang Dynasty. Six days later, the court of Tang in Chang’an, 932 miles away from Fanyang where the rebellion began, received the report. This efficiency would not be possible without the help of the national courier system. Ying Zou, \textit{Postal System and Communication in Ancient China} \textsuperscript{[中国古代邮驿制度与传播]}, 23(4) \textit{JOURNAL OF XIANNING COLLEGE} 99, 100 (2003).

\textsuperscript{474} Actually, no censors received promotions to very high administrative ranks. Tang emperors feared that censors would be less critical of the government if they had high official status.
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emperors. The imperial censorate system of Emperor Taizong of Tang (599 AD-649 AD) even inspired a Swedish clergyman to persuade the Swedish government to adopt the Freedom of Press Act in 1766, the world’s first freedom of information legislation.

The imperial censorate system was strengthened in the Tang Dynasty because Taizong was so willing to accept criticism from his advisors. When one of his most important remonstrators Wei Zheng died, Taizong was so doleful that he cried and said to his ministers:

With a bronze mirror, one can see whether he is properly dressed; with history as a mirror, one can understand the rise and fall of a nation; with men as a mirror, one can see the right from the wrong. Now I’ve lost my faithful mirror by the death of Wei Zheng.

The differences between the information policy of Taizong and modern concept of freedom of information are significant. Taizong did not allow the public to access

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governmental documents. Nor did he feel an obligation to proactively disclose what his
government was doing. Only a limited number of privileged officials had access to
government-held records and documents. Regardless, the Tang government was arguably
one of the most transparent in imperial China. Taizong’s point of view on criticism from his
subjects is still noteworthy from the perspective of free flow of information. The emperor
knew that even the sovereign could be misguided or fooled by government secrecy.
Subjects around him reported only good news of the country to him. That is why he tried to
maintain access to people who opposed his policies and reported bad news occasionally. By
doing this, Taizong became more informed and thus made more sound policies. Taizong’s
frustration with the death of remonstrators like Wei Zheng is understandable because his
ability to access all kinds of information was weakened.

4. The Song Dynasty (960 AD–1279 AD)

Government agencies, at the central and local levels, continued to archive official
documents and records in the Song Dynasty. The dynasty established, across the nation, 11
imperial libraries478 with stack rooms filled with wooden shelves and cabinets (jiageku 架
阁库) to preserve various archives.479 Throughout the Song Dynasty, emperors defended
the country from invasions of northern nomadic tribes. Official information regarding
national security was highly protected state secrets. Officials who drafted royal decrees
were often reminded of maintaining confidentiality, but enforcement was less rigorous


than that of the Tang Dynasty. Many recorded cases detail officials’ punishments for leaking military secrets or drafting official documents at home.\textsuperscript{480} The haphazard enforcement of laws controlling state secrets could explain Song’s frequent military setbacks when confronting northern invaders.

Internal communication between Song emperors, advisors and local bureaucrats developed further, but more striking is the new height for external communication between the bureaucracy and common people during the same period. In addition to standardized mechanisms for information exchange established between emperors, major advisors, and local bureaucrats, several largely ignored communication channels are worthy of mention. First, Song emperors used the imperial lecture (\textit{Jingyan 经筵}) system to gather information from within the bureaucracy and beyond. Under the system, highly educated scholars, many of them were high-ranking officials, lectured, one-on-one, with the emperors in the royal palace, assisted rulers’ better understanding Confucian classics, and contributed to sound decisions.\textsuperscript{481} The relaxed, informal and private atmosphere of the lectures allowed emperors to gain information efficiently.

\textsuperscript{480} Two anecdotes illustrate the lax enforcement of laws regarding state secrets in the Song dynasty. Emperor Huizong of Song appointed Zen Bu as prime minister. Zen’s brother, the imperial speechwriter, wrote the announcement. Zen’s 9-year-old daughter overheard the news when she was playing at her uncle’s house. She came home and said to her father, “Dad, you will be the prime minister tomorrow!” Criticism of an imperial official at the court of Emperor Shenzong of Song resulted in a loss of imperial trust from writing, at home, his memorial to impeach the prime minister, the brother’s access to the document, and the brother’s reporting the proposed impeachment to the minister. Records of both anecdotes first appear in Huizhulu [挥麈录], a popular Chinese historical text authored by Song Dynasty scholar, Mingqing Wang. For more information about these anecdotes, see Mingqing Wang, \textit{Waving the Duster} [挥麈录] (2009).

\textsuperscript{481} Chen Dong, \textit{An Introduction of JingYan in Ancient China} [中国古代经筵概论], \textit{1 QILU JOURNAL} (2008); Huayu Wang, \textit{A Study on the Emperors’ Information Channels in Song...
Second, the emperors in the Song Dynasty often used eunuchs and other private groups to gather information. Eunuchs, with some exceptions, were generally more loyal to the emperors than officials and were less influenced by internal political struggles, thus affording the advantage of less prejudice and more disinterest in information gathering. By using eunuchs as “ears and eyes,” Song emperors established an easily controlled and secret informational channel.

Third, the growth of the court gazette enhanced the flow of official information. Starting with the Song Dynasty, the Dibao became the court’s official gazette as the Di became a part of the central government, and appointment of its officials was direct from the court. The rough draft of the newspaper’s reports went to high officials for review prior to printing, publication, and transmission. Restraints disallowed the court gazette to publish news items on major natural disasters, military secrets, imperial confidential matters, and memorials requiring clearance for publication.

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482 Eunuchs were men who were castrated, usually as children, and used in many ancient Asian and Middle Eastern courts to help ensure their loyalty as servants, minor governmental functionaries and as harem guards.


484 The Di was a liaison office of local governments in the capitals.

485 Li Dong, News Censorship in Song Dynasty [浅析宋代新闻管制], 10 Journal of Magnificent Writing 7, 11 (2010).
Clearly, the Song Dibao lost the editorial independence enjoyed by its Tang predecessors, but the newspaper expanded its content to include not only news of the emperors and the central government but also of the regional and local governments. The gazette, at the beginning, published and circulated bimonthly, gradually became a weekly or even daily publication. The paper’s readership expanded rapidly, reaching not only officials above the prefectoral (zhoufu 州府) level but also scholars who held no government positions. Allowing scholars access to the official gazette was a remarkable advancement in terms of ensuring commoners’ greater access to governmental information.

Fourth, “short reports” (xiaobao 小报) began to appear and profoundly influenced the way officials and the masses accessed official information. Short reports were newspapers similar to the court gazette; however, the two were sharply different in many ways: Short reports were private and unauthorized newsheets, owned by numerous businesses and the reports contained similar information, but rumors, government secrets, and any information considered taboo for the official gazette also appeared. Short reports contained the court’s news more rapidly than the gazette because the censorship process did not apply and secret use of the official postal network was the channel for distribution.

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Officials and the public regularly read the publications.\footnote{Fen Zhao, \textit{Comparing Official Gazettes with Short Reports in Ancient China} [中国古代官报与小报的比较], \textit{3 Journal of Youth Journalist} (2010); Hilde De Weerdt, “Court Gazettes” and “Short Reports”: \textit{Official Views and Unofficial Readings of Court News}, 27(2) \textit{Journal of Chinese Studies} 167 (2009); Dan Xie, Xiaotong Qi & Qingling Xiao, \textit{Short Reports in Ancient China} [浅析中国古代小报], \textit{2 Journal of Media Studies} (2008).} Actually, people often read short reports first and then the court gazette second (\textit{yi xiaobao weixian er yi chaobao weichang} 以小报为先, 而以朝报为常) in order to better understand the machinations of government.

When reading official gazettes, court officials and county magistrates often exclaimed, “Oh! The short report on this has already arrived!”\footnote{Hilde De Weerdt, “Court Gazettes” and “Short Reports”: \textit{Official Views and Unofficial Readings of Court News}, 27(2) \textit{Journal of Chinese Studies} 167, 177 (2009).}

The Song government’s authorities suppressed short reports as illegal and unauthentic publications because they interfered with the official sanctions of communications within the bureaucracy and between the center and the provinces. However, such publications survived and prospered in the capital and outlying areas due to the contents’ newsworthiness, timeliness, and unlimited supply of news sources. Some government officials leaked news for remuneration or to attack political enemies; some spies gained income from regularly gathering leaked reports from government offices.\footnote{Hilde De Weerdt, “Court Gazettes” and “Short Reports”: \textit{Official Views and Unofficial Readings of Court News}, 27(2) \textit{Journal of Chinese Studies} 167, 167-200 (2009).}

Short reports, although shunned by rulers, provided Chinese people unprecedented opportunities to know if their “father-mother officials” (\textit{fumuguan} 父母官)\footnote{According to Confucianism, filial piety should convert to loyalty for the emperor and his government. That is why traditional Chinese often called the emperor or even his officials} were truly benevolent parental figures as portrayed in an ideal Confucian society.
5. The Ming Dynasty (1368 AD–1644 AD) and the Qing Dynasty (1644 AD–1912 AD)

Major leaders in the last two imperial dynasties continued to archive official records, installed security measures more stringent than in previous dynasties, to the extent of excluding most Ming and Qing officials from approved readers of those documents. For example, the imperial archival institution in the Ming Dynasty had such high security that “any official would not dare to gaze upon it.”492 The Grand Secretariat Archives (neige daku 内阁大库) in the Forbidden City of the court of Qing, under vigilant protection, disallowed high-ranking Qing officials from seeing a word of the archives “during their lifetime(s).”493

Control of information flow during the Qing Dynasty was the most stringent.494 Continuing the Legalist tradition, Qing laws used the harshest punishments for crimes that as “fathers of all” or “father-mother officials.” ROBERT G. WESSON, THE IMPERIAL ORDER 178 (1967).


494 Philip Kuhn, a prestigious Harvard-educated Western scholar on Chinese history, examined official control of information and its consequences in the late Qing Dynasty. PHILIP A. KUHN, SOULSTEALERS: THE CHINESE SORCERY SCARE OF 1768 (1990) (detailing mass hysteria of the late Qing dynasty caused by widespread fear among peasants, bureaucrats
challenged the authority of the ruler and the state. Leaking state secrets, plotting against the state, spreading rumors were among those crimes, with execution the punishment for anyone leaking military secrets. Officials of the royal court received 100 canings if they divulged non-confidential information, and beheaded if they leaked confidential information. The head of each agency was to personally open secret official documents, with delivery of intra-agency files, sealed, then, unfolded, and archived, personally by the heads of involved agencies.¹⁴⁹⁵

Rulers in the Ming and Qing dynasties further consolidated their control of the official gazette-the Dibao. Unlike rulers of previous imperial dynasties, Ming and Qing emperors became the Dibao’s de facto editors-in-chief, reviewing and approving all its content prior to the publication.

If tighter control from the government countered freedom of information, some developments were encouraging. First, most copies of the official gazette had daily printing and circulation; social news emerged, making the paper more timely and fresh. Second, the court gazette reached the lowest-level officeholders during the Ming and Qing dynasties.¹⁴⁹⁶ Third, another revolutionary form of mass media appeared to compete with the official court gazette and short reports: “metropolitan gazette” (jingbao 京报). As mentioned

and the emperor that sorcerers were able to steal people’s souls and by lack of timely disclosure of credible governmental information).


earlier, the court gazettes were government-run and thus legal; short reports were private businesses and thus illegal. The metropolitan gazettes were private but acknowledged by the government as alternative forms of the official gazettes.

The content of the metropolitan gazettes arose primarily from the court gazettes, but the former circulated, with permission, among political and scholarly elites and the public throughout the nation. As the metropolitan gazettes enjoyed more editorial independence than official organs, the papers clearly carried more newsworthy items and became increasingly popular. As a Western scholar on the origins of the Chinese press stated, the metropolitan gazettes were “very generally read and discussed by educated people in [Chinese] cities” during the late Qing Dynasty.497 Even rural people read them to become informed. A Shānxī rural Confucian recorded in his diary that he read the metropolitan gazette at least five times in 1901 and 10 times in 1902.498

Governmental Informational Policy after Imperial China

1. The Republic of China (1912 AD-1949 AD)

Two thousand years of imperial rule came to a tragic end in 1912 as the regent, the Empress Longyu, announced abdication on behalf of the six-year-old child Emperor Puyi.499 Yat-sen Sun, who was educated in Hawaii during his adolescent years, established the


498 The rural Confucian resident was Dapeng Liu (1857 AD-1942 AD), lived near Taiyuan in Shānxī, approximately 900 miles from the Qing capital, Beijing. S. Wells Williams, 2 The Middle Kingdom: A Survey of the Geography, Government, Literature, Social Life, Arts and History of the Chinese Empire and its Inhabitants (1883).

Republic of China (ROC) in 1912 and became its first temporary president. The country’s chaos caused Sun’s replacement, and after defeating regional warlords, in 1927, Kai-shek Chiang established the unified Nationalist Kuomintang (KMT) government, which collapsed in 1949 when Chiang lost a civil war to Zedong Mao and his communist comrades.

Various schools of thought reemerged and prospered for several decades immediately before and after the disintegration of the Qing Dynasty, including the value of long-lost Mohism.\textsuperscript{500} The Western concepts of freedom, democracy, and Christianity, introduced to China, inspired intellectual richness at the time,\textsuperscript{501} leading to Yat-sen Sun’s creation of a government combining Western democratic ideals and traditional Chinese spirit.\textsuperscript{502} According to the \textit{Provisional Constitution}, the sovereignty of the republic belonged to the people and Chinese citizens enjoyed freedoms, including freedoms of speech, composition, and publication.\textsuperscript{503} It was the first time that China codified such freedoms and

\textsuperscript{500} XiPing Yang, \textit{New Inspirations from Mohism (Chapter 1)} [墨学新悟] (第一章) (2012).


\textsuperscript{503} \textit{The Provisional Constitution of the Republic of China}, 6 The American Journal of International Law 149 (1912).
its significance should not be deemphasized although, in reality, China had yet to fully achieve those freedoms.

In order to avoid trampling on these freedoms, Sun advocated Three Principles of the People (nationalism, democracy, and people's livelihood 民族主义 民权主义 民生主义) and envisioned a five-power constitution, which created an accountable government with five independent and equally important branches (yuan 院): legislative branch, executive branch, judicial branch, examination branch and control branch.504

As the Qing Dynasty collapsed and the new democratic republic emerged, governmental power declined to its lowest while civil liberties rose to its height. Unsurprisingly, “[t]he years...from 1912 to 1927, marked perhaps the period of greatest freedom in 20th-century China.”505 Kai-shek Chiang and his Kuomintang Party (KMT), to some degree, continued Sun's democratic ideals.

The Republic of China continued to attend, scrupulously, to archiving and preserving official documents and records, as did imperial rulers. However, frequent civil wars and sudden changes of regime made archival preservation a daunting task. Officials sold the Qing Dynasty archives for profit, and some valuable documents were like

504 The examination branch and the control branch are absent in most Western democracies. The examination branch’s responsibility was administering civil service examinations. The control branch authorized monitoring public officials and recommended impeachment or other corrective measures for miscreant officeholders. Sun Yat-sen, Fundamentals of National Reconstruction, in 2 Sources of World History 281-285 (Mark A. Kishlansky ed., 1995); Alan Lawrance, China since 1919: Revolution and Reform: A Sourcebook 23 (2004).

wastepaper.\textsuperscript{506} This lack of respected value was partially due to the trend of decreased harshness of laws for guarding state secrets. The death penalty applied only to leaking significant military secrets, but laws punishing the press publishing state secrets emerged.\textsuperscript{507}

The Republic of China promoted remarkable growth of newspaper businesses, both state-run and private. The modern press replaced court gazettes, short reports and metropolitan gazettes. Unlike other Leninist parties in the world, The Chiang-led Kuomintang party had an ideological commitment to full constitutional democracy.\textsuperscript{508} Furthermore, the government was weak both politically and militarily, leading to haphazard and erratic enforcement of press censorship laws. Yutang Lin (1895 AD-1976 AD), a well-known Chinese writer and social commentator, once observed, “The anarchy of Chinese [ROC] censorship is shown in its lack of system, coordination and consistency. News suppressed in one city may be passed in another. The deletion of news often depends on the whims and vagaries of the individual censors.”\textsuperscript{509} Many prominent private publications like \textit{Impartial Daily (dagong bao 大公报)}\textsuperscript{510} consistently covered official

\textsuperscript{506} DANIEL LESE, MAO CULT: RHETORIC AND RITUAL IN CHINA’S CULTURAL REVOLUTION IX (2011).


\textsuperscript{508} Yangsun Chou & Andrew J. Nathan, Democratizing Transition in Taiwan, 27 ASIAN SURVEY 277 (March 1987).

\textsuperscript{509} YUTANG LIN, A HISTORY OF THE PRESS AND PUBLIC OPINION IN CHINA 177 (1936).

\textsuperscript{510} Dagong bao was known for investigative journalism and it was a recipient of the 1941 foreign press award from the University of Missouri School of Journalism. Making
activities and were highly critical of Chiang and his government. Fortunately, the Kuomintang-controlled arena continued to allow publications to circulate. During World War II, the Western concept of freedom of the press transmitted to China. Governmental press officers coveted and revered foreign correspondents based in the wartime capital city of Chongqing.

Similar to any society, not many ROC officials preferred governmental transparency, and the government did not sponsor freedom of information laws during its rule in Mainland China. However, the republic's bureaucracy, as a whole, attempted to enhance governmental transparency because of the short-term need to publicize policies and mobilize public support against communism, and because of the long-term commitment to constitutional democracy. Partially achieving this goal was allowance of some degree of


Chonghua Li, How Did Nationalist Government Treat Foreign Journalists in Temporary Capital [国民政府对华外国记者的态度], 2 JOURNAL OF ZHEJIANG NORMAL UNIVERSITY (SOCIAL SCIENCES) 77 (2006); Feng Dun & Ting Zhao, Wartime Management of Foreign Journalists by Chongqing Nationalist Government During War Against Japanese Aggression [抗战时期重庆国民政府对外国记者的管理刍议], 10 SOUTHEAST COMMUNICATION 83 (2010).

In 2005, the Republic of China (Taiwan) adopted its first freedom of information law, known as Freedom of Government Information Law. The law protects the people's right to know, understand, trust and oversee public affairs and establishes procedures for citizens to request access to governmental information. Freedom of Government Information Law 2005 (The Republic of China, Taiwan).
editorial independence to the press for covering and reporting official activities. Consequently, citizens had unprecedented access to governmental information, and the provincial Shānxī government was even more disclosure-friendly than many other provincial bureaucracies. The Shānxī government established rooms across the province, some staffed by officials to assist the illiterate, for reading newspapers in many towns and villages.⁵¹⁵ A Western scholar vividly portrayed how ROC local officials used mass media to disseminate official information to ordinary citizens:

In 1919 the Shanxi Daily News ... published an account by one of its readers who had visited some remote villages and had been impressed at how well informed the villagers were about recent government policies and reforms. He explained that the villagers now understood that certain traditional customs were wrong, because when they were resting, enlightened village leaders or schoolteachers often hold a copy of this newspaper in their hands and read it aloud and explain it.⁵¹⁶

2. The People’s Republic of China (1949 AD-1976 AD)

When Zedong Mao and his revolutionary comrades exiled Kai-Shek Chiang to Taiwan and founded the People’s Republic of China (PRC) in 1949, communist leaders began to establish a system to control, tightly, official information. They embraced the

⁵¹⁵ Henrietta Harrison, Newspapers and Nationalism in Rural China, 1890-1929, 166 PAST & PRESENT 181, 202 (2000).

⁵¹⁶ Henrietta Harrison, Newspapers and Nationalism in Rural China, 1890-1929, 166 PAST & PRESENT 181, 181 (2000).
traditional Legalist approach of totalitarianism for social control and also adopted the characteristic of the former Soviet Union's complete secrecy.

Communist leaders long recognized the importance of archiving government documents and maintaining them as classified. In 1950, the new communist government issued orders protecting archives from “plundering and profiteering and to prevent betrayal of state secrets.” One year later, Provisional Rules for Managing Public Documents came into effect. In 1954, establishment of the State Archives Bureau (guojia dang’anju 国家档案局) gained responsibility for nation-wide archival matters and assumed regulation of both party and governmental archives. In 1956, Henan Province established the country’s first provincial archive and three years later the Central Archives opened in Beijing. By 1966, among 32 provinces and autonomous regions, 28 had established archives. Renowned Western scholar of Chinese politics, Andrew Nathan, noted:

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517 Zedong Mao removed Confucianism as old thought and replaced it with socialism and Marxism. He often claimed that he was a Legalist and identified himself with the emperor Qin. Gucheng Li, A Glossary of Political Terms of the People’s Republic of China 346 (1995).

518 The highly restrictive information policy of the former Soviet Union did not end until the last Soviet Union President, Mikhail Gorbachev, assumed office in the 1980s. Jiwen Deng, Information Dissemination of the Former Soviet Union from the Point of View of the Media: A Brief History [传媒视野下前苏联的信息发布：一个简史], 5 (2) JOURNAL OF CENTRAL SOUTH UNIVERSITY OF FORESTRY AND TECHNOLOGY (SOCIAL SCIENCES) 11, 11-13 (April 2011).


[T]he Chinese Communist Party obsessively collects its own documents and with equal obsessiveness keeps them secret. National-level Party and state civilian archives reaching back to the early history of the Communist movement and up to the recent past are kept by the Central Archives ... Local government archives, military archives, and archives of the pre-1949 Nationalist regime are held elsewhere. Drafts and originals of official telegrams, reports, decisions, meeting minutes, and the like are sent to the archives ... after having been kept in their original units for a number of years ... [T]he archives were off-limits, except in rare cases, to high-ranking Party officials.522

During Mao’s rule, archiving the government’s documents became permanent, indicating that unalterable status as classified. Mao and his advisors not only denied the people’s right to access governmental archives but also classified any information considered potentially inappropriate for the public. Leaking such information incurred severe penalties. In 1951, the PRC promulgated Provisional Act on Guarding State Secrets, which was so vague that almost all information, not officially made public, could be “state secrets.”523 People’s Daily republished the law in 1980 to reiterate authority and the law did not expire until replaced in 1989 by Law on Guarding State Secrets.

Under Mao’s leadership, most private media that flourished in the pre-1949 Republic of China era disappeared.524 All the news media outlets became governmental institutions, with each having its corresponding administrative rank.525 The role of mass

524 Since 1953, only four privately-owned newspapers were left in China but all lost their independence status. They were all staffed with Communists or pro-Communists. Franklin W. Houn, Chinese Communist Control of the Press, 22 The Public Opinion Quarterly 438 (1958-1959).
525 For example, People’s Daily and Xinhua News Agency are the two news organizations having the most senior administrative rank. Publishers and editors-in-chief of these two
media was to propagandize government policies and gather intelligence for the party. Editors subverting the party line were eliminated. Any journalists promulgating or disseminating criticism of the conduct of government became pariahs, rightists, and encountered persecution, imprisonment, torture, and even death. Chairman Mao, first in 1957, advocated a news reporting principle of “the news, old news or no news” (xinwen jiwen buwen 新闻 旧闻 不闻). The principle means that certain categories of information should be timely released whereas postponement, or deliberate ignoring applies to other categories of official information. The government followed the Mao principle for reporting many crises until the early 2000s.

Media outlets enjoy political status as governmental ministers. Newspapers with lower administrative rank were not allowed to criticize party and government officials with higher administrative rank.


527 Changjiang Fan, a famed journalist for the prestigious Impartial Daily (Dagong bao) that prospered in the pre-1949 Nationalist era, was the publisher of People’s Daily. Tuo Deng was the editor-in-chief of the People’s Daily. Both were purged by Mao and committed suicide during the Cultural Revolution.

528 ZEDONG MAO, SELECTED WORKS OF ZEDONG MAO ON JOURNALISM 毛泽东新闻工作文选 193 (1983).

529 For example, The Tonghai earthquake in 1970 killed 15,621 civilians, however, the death toll was not publicized until January 2000. Hong Yin, Release of Death Toll from Tonghai Earthquake Delayed for 30 Years. What Can We Do to Comfort Spirits of the Dead? [通海地震三十年后解密，我们拿什么告慰亡灵], CHINA YOUTH DAILY, January 12, 2000. The Tangshan earthquake in 1976 killed 240,000 people and severely injured 160,000. However, the Chinese public did not know this information until 23 November 1979 when People’s Daily published those numbers. Xuejiang Xu, Death Toll of Tangshan Earthquake: More Than 240,000 [唐山地震死亡 24 万多人], People’s DAILY, November 23, 1979, at 4.
Citizens could not obtain meaningful official information from the mass media due to heavy-handed governmental suppression of press freedom. Constant political indoctrination and Mao’s call for continuous political campaigns was the staple of the media. According to Amartya Sen, a Nobel Prize laureate in economics, lack of freedom of information played a major role in the deaths of tens of millions of Chinese people from starvation during the great famine from 1959 to 1962.\textsuperscript{530}

Fortunately, at least government officials’ access to information was not completely absent. Communist bureaucrats at various levels relied on the internal reference system to know what was really happening in the country and elsewhere. The system, created in the 1930s when Chinese communists were still fighting guerilla wars against the ruling KMT military forces, was highly innovative but costly. Any information (e.g., governmental infighting, official corruption, social scandals, and major natural disasters, rural and urban unrest) deemed too sensitive for the public to see appeared in separately published internal reports\textsuperscript{531} by official media outlets and sent exclusively to party and governmental officials.


\textsuperscript{531} Cancao Xiaoxi (Reference News) was such an internal report. Created in 1931 by the Xinhua News Agency, Cancao Xiaoxi symbolizes the beginning of the internal reference system in China. Today, Cancao Xiaoxi is no longer an internal report, instead, it has become a regular newspaper with a circulation of over 2 million, far exceeding any other newspaper in the country. Xinmin Zhang, Cancao Xiaoxi: From Internal Report to Newspaper
leaders at various levels.\textsuperscript{532} Central and local agencies published similar internal periodicals on a regular basis.\textsuperscript{533} Political and government leaders relied heavily on this system to gather information and make decisions.

Government secrecy culminated during the Cultural Revolution (1966 AD-1976 AD).\textsuperscript{534} During these ten tumultuous years, the only freedom of information the ordinary


\textsuperscript{533} Chinese Party and governmental agencies continue to publish internal documents today. For example, The Chinese Communist Party (CCP) Central Propaganda Department publishes \textit{Propaganda Trend} (\textit{Xuanchuan dongtai 宣传动态}) on a weekly basis. YUEZHI ZHAO, \textit{MEDIA, MARKET, AND DEMOCRACY IN CHINA: BETWEEN THE PARTY LINE AND THE BOTTOM LINE} 20 (1998). The Central Organization Department issues \textit{Party Construction Research Internal Reference} (\textit{Dangjian yanjiu neican 党建研究内参}), which is accessible online only to subscribers who are party and government leaders above county level. Each institute at the China Academy of Social Sciences, a prestigious official think tank, produces various types of internal reference materials (\textit{neican}). \textit{DECISION-MAKING IN DENG’S CHINA: PERSPECTIVES FROM INSIDERS} 114 (Carol Lee Hamrin & Suisheng Zhao eds., 1995). Even some large public libraries in China publish internal reference materials on a regular basis. For example, the Sun Yat-Sen Library of Guangdong Province issues \textit{Decision-Making Neican} intended for political elites in the Gudangdong area.

\textsuperscript{534} In order to create a classless society and regain lost authority, Mao launched the Cultural Revolution. Mao destroyed the bureaucratic machine and purged the majority of comrades who once fought with him against Kai-shek Chiang.
Chinese enjoyed was reading Mao’s Little Red Book (hongbaoshu 红宝书)\(^{535}\) and posting big-character posters (dazibao 大字报)\(^{536}\). During Mao’s final years, even well-connected officials lost the opportunity to see Mao in person and remained ignorant of the government’s direction.\(^{537}\) Nearly 16 hours passed before the news of Mao’s death became public.\(^{538}\)

**Summary and Conclusion**


\(^{537}\) Mao died in 1976. He was so ill during his final years that he was unable to attend high-level party and governmental meetings. Yuanxin Mao, Mao’s nephew, became the formal liaison between Mao and the Politburo of the Chinese Communist Party in 1975. Yuanxin Mao had considerable power for a short period of time because no other officials had access to Mao. RICHARD BAUM, BURYING MAO: CHINESE POLITICS IN THE AGE OF XIAOPING DENG 34 (1996); LAWRENCE SULLIVAN, HISTORICAL DICTIONARY OF THE CHINESE COMMunist PARTY 174 (2011); Frederick C. Teiwes & Warren Sun, The End of the Maoist Era: Chinese Politics During the Twilight of the Cultural Revolution, 1972-1976 399 (2008).

\(^{538}\) Mao died at 12:10 a.m., September 9, 1976 and China National Radio announced his death at 4 p.m. the same day. In the 1970s, radio was the most efficient way to disseminate information in China. Zhenquan Yang, Behind-the-Scene Story About Public Broadcasting Zedong Mao’s Death (One) [毛泽东主席逝世公开广播的背后（上）], 8 INTERNATIONAL COMMUNICATIONS 52, 52-55 (2006); Zhenquan Yang, Behind-the-Scene Story About Public Broadcasting Zedong Mao’s Death (TWO) [毛泽东主席逝世公开广播的背后（下）], 9 INTERNATIONAL COMMUNICATIONS (2006).
This chapter examines the development of Chinese governmental secrecy and transparency beginning with the Xia Dynasty and ending in 1976 when Chairman Zedong Mao died, a span of over 4,000 years. Five aspects are worthy of note after the detailed examination of communication and/or informational policies in Chinese history:

First, like the two sides of the same coin, both secrecy and transparency were necessary means for controlling official information. Almost all ancient governments in the world believed both in the power of behind-the-scenes politics and certain degree of government disclosure. China was no exception. In Chinese history, no form of government characterized a complete informational blackout. Likewise, no form of government allowed total disclosure of official information.

The Xia and Shang dynasties initiated secrecy for official documents. No instances record official transparency during this period. The likelihood is that practices of disclosure of official information were just too old to be recorded at the dawn, more than 4,000 years ago, of the Chinese civilization. All subsequent rulers after the Xia and Shang dynasties, ranging from the Zhou Dynasty to Mao’s communist regime, restricted the free flow of information, and at the same time publicized certain categories of information. Different rulers in different periods, regardless of the nature of the form of government, tended to have diverging views and predilections toward openness and secrecy, thus leading to varying degrees of transparency. However, any differences in policies were matters of degree, not kind.

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539 Even in the ancient United Kingdom, the birthplace of modern democracy, the king and his top advisors discussed all the major issues of the state in a small and private chamber, the original meaning of the English word “cabinet.”
Second, divergent ruling philosophies and political theories led to sharply different informational policies. The hundred schools of thought that flourished in the Zhou Dynasty significantly impacted Chinese rulers in terms of crafting informational policy. Mohism had the greatest potential of helping establish a transparent government, but its democratic nature led resentment and suppression by early rulers. The philosophy reemerged in the early years of the Republic of China. In conjunction with Western democratic ideals, Mohism played a role in making the ROC government more transparent. Legalists were strong advocates of government transparency, but they only allowed dissemination of laws and regulations among commoners. Confucianism disagreed with governmental openness and Taoism was a philosophy reserved for officials experiencing leisure, retirement or political ostracism. Legalism became dominant in some Warring States and the Qin Dynasty’s rulers created the precedent for publicizing written laws. When Confucianism modified and incorporated Legalism and became the ruling ideology of imperial dynasties from the Han Dynasty to the Qing Dynasty, emperors and officials practiced official secrecy but at the same time allowed very limited sharing of a category of information with the public: laws and regulations. Mao’s rule relegated Chinese freedom of information to a new low by combining Legalism, Socialism, Marxism and the former Soviet Union’s penchant for secretive politics.

Third, ranking Chinese governments of different time periods in terms of governmental transparency is difficult, but a safe conclusion is that, overall, governmental openness in China had an upward trajectory, with some peaks and depressions. The first peak for governmental transparency was during the Zhou Dynasty due to the proliferation of practices for publicizing written laws and relatively greater freedom of expression.
enjoyed by commoners. The second peak occurred in the Tang and Song dynasties when rulers and common citizens used newspapers (the court gazettes or short reports) to disseminate governmental information. People had greater access to official information in the Tang and Song dynasties also because emperors and their prime ministers shared power, thus allowing greater flow of information between the sovereigns and their subjects.\(^{540}\) The Republic of China witnessed a third ascent of governmental openness when private news outlets rigorously covered official activities. The Qing Dynasty and Mao’s China, without doubt, represent the deepest descents in terms of governmental transparency.\(^{541}\) During these two periods, both suppression of individual liberties and concentration of power in the hands of paramount leaders reached new heights.

Fourth, imperial China developed an extraordinary self-enclosed communication system to sustain its huge bureaucracy. The Chinese saying, “the sky is high, the emperor is far away,” (天高皇帝远) reveals the challenge of controlling local officials in ancient China, given the empire’s incredible geographic size and large population. In order to broadcast the voice of the central government to every corner of the country, emperors granted advisors and local officials certain freedom of information that

\(^{540}\) Prime ministers in the Tang and Song dynasties had significant power. Elimination of the office of prime minister occurred after the Yuan Dynasty, allowing emperors to consolidate power. Institute for Advanced Chinese Studies, 9 Chinese Culture (1968); Craig A. Lockard, B Societies, Networks, and Transitions: A Global History 286 (2010); George Fusun Ling, China Developing: Cultural Identity of Emerging Societies 37 (2008).

\(^{541}\) Philip Kuhn, a prestigious Harvard-educated Western scholar on the Chinese history, examined the extent of government secrecy in the late Qing Dynasty and its severe consequences. Philip A. Kuhn, Soulstealers: The Chinese Sorcery Scare of 1768 (1990) (chronicling mass hysteria of the late Qing dynasty caused by lack of governmental information disclosure and widespread fear among peasants, bureaucrats and the emperor that sorcerers were able to steal people’s souls).
common people did not enjoy. Governmental officials, despite their locations, the capitals or remote places, regularly received official gazettes and other official documents through the postal courier system. Depending upon their administrative ranks, they had the privilege of accessing: activities and speeches of the leaders (e.g., emperors, warlords), imperial orders and governmental decisions, policies, laws, regulations, official appointments, promotions, demotions, compliments, disciplinary actions, memorials to the throne, working plans of central and local governments, recommendations, and remonstrance from local officials.\textsuperscript{542} The developed communication system contributed to the Chinese empire’s longevity.\textsuperscript{543} However, this communication system excluded most common people. Information affirmatively and proactively disclosed to the public was little and carefully selected.\textsuperscript{544} Governors only disclosed information that they wanted the public to know; anything else became a state secret since the authority to determine the classification of information rested solely with the governors. As a Chinese communication


\textsuperscript{543} A widely accepted notion is that the publication of \textit{Acta Diurna} (Daily Public Record), the official gazette of the Roman Empire, contributed to the empire’s ability to rule a vast empire. The Roman Empire collapsed partially due to overextended lines of communication. Norman F. Cantor, \textit{The Civilization of the Middle Ages: A Completely Revised and Expanded Edition of Medieval History} 41 (1994); Kevin Williams, \textit{Read All About It!: A History of the British Newspaper} 26 (2010).

A scholar stated, “The communication history of imperial China is a history of communication suppression.”

Fifth, with the help of technology, pre-modern and modern mass media played an important role in propagating Chinese governmental information. Ancient Chinese rulers used many innovative methods to enable information to reach as many commoners as possible. The inception of the court gazette in the Tang Dynasty allowed unprecedented ease for bureaucratic internal communication. Short reports that emerged in the Song Dynasty and independent private media that flourished in the Republic of China changed even the communication dynamics. These media outlets challenged official versions and interpretations of social events and greatly enhanced common people’s capability to access governmental information.

As discussed previously, Chairman Mao brought governmental transparency to an unprecedented depth. Soon after his death and the downfall of the Gang of Four, Xiaoping Deng came to power and became the supreme leader of the Chinese Communist Party and the state. Deng adopted the fundamental policy of reform and opening up to the outside world in 1978. Economic reform was high on the agenda. The party was also determined to set socialist democracy and rule of law as its goal due to painful experiences.

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546 The Gang of Four consisted of Qing Jiang, Mao’s last wife and her close associates Chunqiao Zhang, Wenyuan Yao, and Hongwen Wang. During the Cultural Revolution, they all became powerful members in the Party. Mao used the Gang of Four to purge his political opponents. BILL BRUGGER, CHINA SINCE THE ”GANG OF FOUR” (1980).
of most purged top leaders during the Cultural Revolution.\textsuperscript{547} Deng valued the development of government information resources to facilitate economic modernization.\textsuperscript{548} He also started to reestablish the legal system that was severely damaged during Mao’s rule. This policy change paved the way for subsequent administrative law reform that began in the 1980s and 1990s.\textsuperscript{549} Zemin Jiang and Jintao Hu, the core leaders of third and fourth generation of the party, continued Deng’s work.\textsuperscript{550} All of these initiatives have provided strong political commitment to transparency. The ambitious experiment finally crystallized in 2007 in the country’s first national freedom of information law—\textit{Regulations of the People’s Republic of China on Open Government Information (ongi Regulations)}.

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\textsuperscript{547} Xiaoping Deng himself was a victim of Zedong Mao’s ruthlessness and lawlessness. Deng was purged three times by Mao and Deng’s first son was crippled by the Red Guards and became a paraplegic. Vital differences existed between Deng and Mao in their views of socialist democracy despite that both believed in the unquestionable ruling status of the party. Mao paid lip service to socialist democracy most of the time whereas Deng intended to implement socialist democracy and the rule of law to prevent the chaos of the Cultural Revolution from occurring again.


\textsuperscript{550} Zemin Jiang, \textit{Hold High the Great Banner of Xiaoping Deng Theory for an All-round Advancement of the Cause of Building Socialism with Chinese Characteristics to the 21st Century} [高举邓小平理论伟大旗帜，把建设有中国特色社会主义事业全面推向二十一世纪], speech delivered at the 15th Party National Congress, Beijing, 12 September 1997; Jintao Hu, \textit{Hold High the Great Banner of Socialism with Chinese Characteristics and Strive for New Victories in Budding a Moderately Prosperous Society in All Respects} [高举中国特色社会主义伟大旗帜 为夺取全面建设小康社会新胜利而奋斗], speech delivered at the 17th National Party Congress, Beijing, October 2007.
Chapter Five: Legislative History of OGI Regulations and Rationales for the Rise of Chinese Freedom of Information

Introduction

Chairman Zedong Mao established a comprehensive information control system after assuming office in 1949. Mao died in 1976, a purge of the Gang of Four occurred one month later. Within two years, when Xiaoping Deng emerged as supreme leader of China, the country began a long journey toward socialist democracy and the rule of law. As a part of efforts to reform and openness to the outside world, post-Mao China began to embrace, gradually, the concept of greater official transparency. This chapter will provide an overview of the legislative background of Regulations of the People’s Republic of China on Open Government Information (OGI Regulations) and explore the influence of various factors’ contributing to final passage of the OGI legislation in 2007.

Proactive Disclosure at Village Level: Open Village Affairs (OVA)

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551 The Gang of Four consisted of Qing Jiang, Mao’s last wife and her close associates Chunqiao Zhang, Wenyuan Yao, and Hongwen Wang. During the Cultural Revolution, they all became powerful members in the Party. Mao used the Gang of Four to purge his political opponents. Bill Brugger, China Since the “Gang of Four” (1980).

552 Xiaoping Deng himself was a victim of Zedong Mao’s ruthlessness and lawlessness. Deng, purged three times by Mao and Deng’s first son, crippled by the Red Guards became a paraplegic. Vital differences existed between Deng and Mao in their views of socialist democracy despite both believing in the unquestionable ruling status of the party. Mao paid lip service to socialist democracy most of the time; whereas, Deng intended to implement socialist democracy and the rule of law to prevent the chaos of the Cultural Revolution from recurring.

553 China has six practical (de facto) levels of central and local government: the central, province, prefecture, county, township, and village. Practically, the village is the lowest level of government. Officially, the township is the lowest level of government. For each level of government, normally excluding village and township, the government has six branches (liutao banzi): the party, the government, the people’s congress, the
For freedom of information in the international community, standard practice supports publicizing government-held information in two main ways. The first is reactive disclosure (yi shenqing gongkai 依申请公开) by which individual citizens file requests for the information and wait for approval or rejection. The second is proactive disclosure (zhudong gongkai 主动公开) by which public bodies disclose information, voluntarily, according to their own initiatives, without a prior request.\(^{554}\)

The Chinese movement toward greater official transparency began in the form of proactive disclosure of information held by governmental units in the rural areas where Xiaoping Deng initiated his national economic reform. This bottom-up approach to transparency promotion is contrary to common assumptions that higher educational and socio-economic status of citizens leads to greater aspirations and higher capacities for the free flow of information. However, the approach seems suitable to the Chinese political environment. Given the sensitivity and complexity of the issue, political reforms (including governmental transparency) implementation in China has been gradual, cautious, and incremental. If political reforms originated in large cities and at the central level, insurmountable resistance from powerful interest groups would ensue. Once such reforms failed, social turmoil would likely result. Political reforms, originating in rural areas and at local levels, provided a solid foundation for similar reforms to germinate in higher levels of court, the procuratorate and the political consultative conference. In order to avoid confusion, notably, OGI Regulations only cover the government, not any other branches.

government. Even if such local level political reforms failed, unbearable political and social consequences for the whole nation would be unlikely.

In the late 1970s and early 1980s, dismantling of rural communes\(^\text{555}\) began. Villagers organized committees as governing institutions to manage public properties and agricultural production. Villagers directly elected all committee members, and some committees introduced the practice of “open village affairs” (OVA, \textit{cunwugongkai} 村务公开) by periodically publicizing the village’s budgets and expenditures.\(^\text{556}\) Similar OVA practices later extended to all villages in the country. In 1982, the \textit{Chinese Constitution} included this system of autonomy.\(^\text{557}\)

The OVA program became institutionalized, and according to \textit{Organic Law of Villager Committees} with a pilot trial in 1987 and fully adopted in 1998 by the National People’s Congress, village committees were to follow “the system of open administration of village affairs” by publicizing, every six months, information concerning various aspects of village

\(^{555}\) Zedong Mao founded the people’s communes in 1958. Mao did this to promote small-scale production of steel in order to compete with Britain and the United States. Communal dining characterized communes, which banned private cooking. Governmentally sanctioned communes exercised tremendous power over distribution and management of all rural resources.

\(^{556}\) The current researcher was born in the 1970s and grew up in a village in Sichuan Province until he left for college at the age of 18. As a teenager, he personally witnessed many practices of OVA. For example, he attended village committee meetings several times with his mother and saw in person how the village committee announced budgets and expenditures, and how villagers questioned their leaders ferociously about the truthfulness of the financial information disclosed.

governance.\textsuperscript{558} Information obligatory for committees to disclose range from revenues, expenditures, property status, debts, financial claims, and village leaders' official contractual performances, family planning, disaster relief, and land expropriation.\textsuperscript{559}

The success of the OVA initiatives attracted the attention of the party and the central government, which held many meetings\textsuperscript{560} and issued a series of notices and documents\textsuperscript{561}

\begin{itemize}
\item The law, amended in 2010, contains a revision that increases the rigor of the disclosure standard. According to the revised law, “information concerning general matters shall be disclosed at least once every quarter; financial receipts and expenditures shall be disclosed at least once every month if collective financial transactions are frequent; and significant matters involving the interests of villagers shall be disclosed at any time when they occur.” \textit{Organic Law of the Villager Committees 1998} (amended in 2010). Art. 30.
\item For example, the National Conference on the Construction of Grassroots Organizations in Rural Areas [全国农村基层组织建设工作会议] convened in 1994; the Ministry of Civil Affairs’ meeting in 1995 shared among meeting participants experiences from villagers’ autonomy [全国村民自治工作经验交流会]; the Central Commission for Discipline Inspection of the Chinese Community Party and the Ministry of Supervision held a forum in Tianjin in 1997 to discuss villages’ open affairs [cunwu gongkai gongzuo zuotanhui 村务公开工作座谈会].
\end{itemize}
to enhance transparency in the countryside. OVA oversight teams (cunwu gongkai jiandu xiaozu 村务公开监督小组) established in 2004 for villages throughout the country oversaw implementation of the OVA system. Team members, elected, have some expertise in finance and accounting. Elections exclude village cadres, spouses, and lineal relatives. Oversight teams examined whether or not information disclosed is “complete and real,” and the expectation is for performance of duties in an “impartial and honest” manner.

After nearly 30 years of virtually complete informational blackout from the government under Mao’s rule, Chinese farmers began, in the 1980s, to enjoy unprecedented freedom of information due to frequent and proactive disclosure of information by village committees. The OVA system became so popular that many villagers called it the “Sunshine Project.”

Opening village affairs to public scrutiny appears trivial

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562 Oversight teams were made possible as a result of the party and government decision. In June 2004, the General Office of the Chinese Communist Party Central Committee and the General Office of the State Council issued a legally binding document. In this document, the party and the government require villages to set up supervision teams to make sure the open village affairs system is implemented effectively. Opinions on Perfecting and Improving the System of Openness and Democratic Administration of Village Affairs [《中共中央办公厅、国务院办公厅关于健全和完善村务公开和民主管理制度的意见》] issued in June 2004.


on the surface because a wealth of information in the cabinets, safes, and document files of
the whole Chinese bureaucracy above the village level still remained inaccessible to the
public at the time. However, the importance of village transparency is apparent: The
establishment of the OVA system is modern China’s first step toward greater government
transparency. Jamie P. Horsley, a prolific Yale University scholar of Chinese freedom of
information, stated that open village affairs in China “marked a significant advance in the
institutionalization of open governance at the village level.”

**Proactive Disclosure at Township Level: Openness in Governmental Affairs**

**(OGA)**

The practices of “open village affairs” (OVA) formally extended from the village level
to the township level in December 2000 when the party and the State Council issued *Notice
on Promoting Openness in Government Affairs around All Government Agencies at the
Township Level*, The “open village affairs” program was subsequently renamed the
“openness in government affairs” (OGA, *zhengwu gongkai* 政务公开) program. Similar to
the “open village affairs” program, the OGA program required township governments to
disclose fully to the public all the information vital to the interests of towns’ residents.

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566 Jamie P. Horsley, *Toward a More Open China?, in The Right to Know: Transparency for an
Open World* 59 (Ann Florini & Joseph E. Stiglitz eds., 2007).

567 *Notice of the General Office of the Chinese Communist Party Central Committee and the
General Office of the State Council on Promoting Openness in Government Affairs around All
Government Agencies at the Township Level* [中共中央办公厅、国务院办公厅关于在全国乡镇政权机关全面推行政务公开制度的通知], issued December 2000.

568 *Notice of the General Office of the Chinese Communist Party Central Committee and the
General Office of the State Council on Promoting Openness in Government Affairs around All
Some exceptions remained: information of charges for entertainment and travelling expenses, information of rewards and punishments to cadres, and information about whether a township’s leading cadres were uncorrupted, honest, and self-disciplined, represented the exemptions to disclosures to the public, but township leaders and their staff must have access to the information.\textsuperscript{569} Publication of information occurred through notice billboards, meetings, radio, television, handbooks, and electronic touch screens.\textsuperscript{570} Established oversight teams scrutinized the township’s OGA program for operation and effectiveness.\textsuperscript{571} The \textit{Notice} even encouraged news media to report townships’ OGA programs. People were free to have programs’ irregularities exposed by journalists.\textsuperscript{572}

\textbf{Proactive Disclosure above Township Level: Openness in Governmental Affairs (OGA)}


Responding to the party and the central government, governmental agencies extended the practices of “openness in governmental affairs” program from the township level to higher-level, county governments (xian 县) and county-level city governments (xianjishi 县级市). Provinces (sheng 省), autonomous regions (zizhiqu 自治区), municipalities directly under the central government (zhixiashi 直辖市), and central governmental ministries (guojiabuwei 国家部委) followed suit.

573 In the Notice on Promoting Openness in Government Affairs around All Government Agencies at the Township Level issued in 2000, the party and the State Council mandated governments above township-level to prepare for implementation of a similar “openness in governmental affairs” program.

574 Mainland China has approximately 2862 county-level divisions, including counties and county-level cities, <http://www.gov.cn/test/2005-06/15/content_18253.htm> (last visited November 18, 2012). In 1988, the Gaocheng County in Hebei Province became the first county-level government to disclose administrative rules and decisions as a gesture of accepting the public’s supervision. However, similar practices of open government affairs at the county-level were sporadic throughout the 1980s and the 1990s. Institutionalization of practices did not occur until after 2000 upon issuance of the notice on township governmental transparency. OPENNESS IN GOVERNMENTAL AFFAIRS [政务公开] 7 (The General Office of the Central Commission for Discipline Inspection, ed., Beijing Fangzheng Press, 2004).


576 Mainland China has five autonomous regions (Xinjiang, Tibet, Inner Mongolia, Ningxia and Guangxi), <http://www.gov.cn/test/2005-06/15/content_18253.htm> (last visited November 18, 2012).

577 Four municipalities are directly beneath the central government (Beijing, Shanghai, Tianjin and Chongqing). These four big cities have provincial level governments, <http://www.gov.cn/test/2005-06/15/content_18253.htm> (last visited November 18, 2012).

578 The State Council consists of 27 ministries and commissions, such as the Ministry of Foreign Affairs, the Ministry of Finance, the Ministry of Agriculture, and the Ministry of Public Security. For organizational structure of the State Council, visit
For example, many ministries, such as the General Office of the State Council in 2002, the National Auditing Office in 2003, the Ministry of Commerce in 2003, the Ministry of Transportation and the Ministry of Foreign Affairs (MFA) in 2004, adopted OGA practices in the 2000s. The establishment of the OGA program at the MFA is most noteworthy. As one of the most secretive governmental agencies in China, the MFA has become more transparent since 2004 by boldly declassifying huge volumes of diplomatic


579 Beginning in 2002, the General Office of the State Council provided free copies of Gazettes of the State Council to all branches of government above township-level and democratic parties. Songyan Zhu, Analysis of and Thoughts on Current Situation of FOI in China, 3 JOURNAL OF EXPANDING HORIZONS 31 (2003). The Gazette contains almost all the Chinese laws, regulations, and executive orders published later than 1999. Currently anyone in the world can access the website (http://english.gov.cn/documents/gazettes/index.htm) for the Gazette of the State Council. The U.S. equivalent of the Gazette of the State Council is the Federal Register, the official journal of the federal government of the United States, published daily, since the 1930s, with proposed rules and final rules of federal agencies.

580 In 2003, the National Auditing Office decided to open all auditing reports and investigation reports to the public by 2007. Previously, almost all auditing reports were secret, submitted only to the State Council and the NPC. Auditing Reports to Be Opened, PEOPLE’S DAILY ONLINE, July 05, 2003, <http://english.peopledaily.com.cn/200307/05/eng20030705_119503.shtml> (last visited November 18, 2012).


582 Notice of the Ministry of Transportation on Printing the Interim Rules on Openness in Government Affairs [《关于印发《交通部机关政务公开规定（试行）》的通知》] No. 58(2004).
documents. The declassified archives "disclose many unknown stories for the first time to the public." 

Similar to the State Council’s ministries, provincial governments in Fujian, Guangdong, and many other provinces scrambled to open their files to public inspection after 2000. Major cities, like Harbin, Taiyuan and Shenzhen, also institutionalized OGA practices. Thirty-one provincial governments, 36 ministerial agencies and 15 sub-

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585 *Interim Rule of Fujian Province on Openness in Government Affairs* [《福建省政务公开暂行办法》] No.70 (2001). Fujian was the first province to institutionalize the OGA practices at provincial level. Xi Jinping, China’s incumbent president and secretary general of the Communist Party, signed the Rule in 2001 when he was the governor of Fujian Province.

586 *Guangdong Provincial Regulations on Making Government Administration Open* [《广东 省政务公开条例》] passed on July 29, 2005 and came into effect on October 1, 2005. Guangdong was the first province to elevate the status of OVA rules to OVA regulations. In China, provincial people’s congresses have the authority to enact local regulations, which have a higher legal standing than administrative rules.

587 All these three cities adopted its *Openness in Government Affairs Rules* in 2003.
Provincial cities (副省级城市) adopted OGA rules or regulations, according to a 2006 investigation.588

**Proactive and Reactive Disclosure at City and Provincial Levels: From OGA to OGI**

Inspired by the accomplishments of the OGA program, the State Council joined the Chinese Communist Party’s Central Committee to issue *Opinions on Further Promoting Openness in Government Affairs* in 2005, 589 the year of extending the OGA proactive disclosure practices to all levels of government.590 The Opinions are significant for four reasons:

First, the Opinions required government agencies to further enhance the proactive disclosure of information and establish a system of “reactive disclosure of information.”591 From open village affairs (OVA) in the 1980s to openness in governmental affairs (OGA) in the early 2000s, the sphere of Chinese freedom of information was incomplete because

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programs relied solely on proactive disclosure of information. The term, “reactive disclosure,” initially introduced in 2005, had explicit mention in the policy document of the Chinese Communist Party, indicating that freedom of information in China would soon be wide-ranging.

Second, the Opinions sought the relevant parties to expedite formulation of Open Government Information (OGI) Regulations and encouraged local governments to adopt interim OGI Rules. This demonstrated the central government’s determination to enhance practices of governmental transparency and use reactive disclosure to supplement proactive dissemination.

Third, the policy directive required agencies to disclose all types of information held, with the only exceptions being state secrets, trade secrets, or individual privacy.

Fourth, the Opinions mandated agencies at all levels to establish offices to lead and execute OGI initiatives.

Boosted by the Opinions and invigorated by the achievements of the OGA program, in 2002, Chinese local governments began to experiment with OGI-related legislation or

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rulemaking. Among the 49 comparatively larger cities in China, in November 2002, Guangzhou was the first city to initiate OGI legislation. By the end of 2006, 17 comparatively larger cities had adopted OGI Rules. Many provincial governments expressed the same eagerness for construction of OGI rules, and among 31 provincial governments in Mainland China, Shanghai published the first provincial-level OGI legislation in 2004. Twelve governments at the province level had adopted OGI Rules by the end of 2006. Unlike the local OGA rules that required governmental agencies to disseminate, only proactively, information, the city and provincial level OGI rules compelled relevant administrative agencies to engage in proactively divulging information but also to release information upon request from individuals or organizations. These local OGI provisions all established “two fundamental novel ideas: that Chinese government agencies have an obligation to disseminate, on their own initiatives and disclose upon

595 A comparatively larger city in China refers to a city where a provincial or autonomous regional people’s government is located or where a special economic zone is located, or a city approved as such by the State Council. According to Article 73 of Legislation Law 2000, a comparatively larger city has the authority to enact local rules, whose legal status is weaker than the Constitution, the law and the regulations. Legislation Law 2000. Art. 73.


request most of the information that they hold, and that Chinese citizens have a right to access such information.\textsuperscript{600} The OGI Rules passed by city and provincial governments provided the central government with “the most comprehensive framework” to use as a reference and basis for drafting national OGI legislation.\textsuperscript{601}

**Proactive and Reactive Disclosure at the National Level: From OGA to OGI**

Ultimately, the OGI legislation was extended from city and provincial levels to the national level because the success of proactive and reactive disclosure of government-held information at the sub-national level provided Chinese OGI reformers with valuable lessons and experiences for drafting the national OGI legislation. The party provided important political and policy guidance for creating nation-wide OGI legislation;\textsuperscript{602} whereas, the

\textsuperscript{600} Jamie P. Horsley, *Toward a More Open China?*, in *THE RIGHT TO KNOW: TRANSPARENCY FOR AN OPEN WORLD* 71 (Ann Florini & Joseph E. Stiglitz eds., 2007).


\textsuperscript{602} Since 2004, leaders from the party-affiliated national anti-corruption or supervisory agencies, such as the Central Commission for Discipline Inspection (CCDI) and the Leading Group on National Openness in Government Affairs (LGOA) reiterated the need to accelerate legislation of *OGI Regulations*. For example, Yong He, deputy director of CCDI and director of LGOA, emphasized the importance of *OGI Regulations* on several occasions. Yong He, speech delivered at the Second Meeting of the Leading Group on National Openness in Government Affairs [何勇同志在全国政务公开领导小组第二次会议上的讲话], Beijing, 29 April 2004; Yong He, *The Leading Group on National Openness in Government Affairs Answered the Questions from Journalists about Notice on Further Promoting Openness in Government Affairs* [何勇同志在全国政务公开领导小组有关负责人就《中共中央办公厅 国务院办公厅关于进一步推行政务公开的意见》的颁布答记者问] press release, 27 April 2005; Yong He, speech delivered at the Sixth Meeting of the Leading Group on National Openness in Government Affairs [何勇同志在全国政务公开领导小组第六次会议上的讲话], Beijing, 31 March 2006; Yong He, speech delivered at the Seventh Meeting of the Leading Group on National Openness in Government Affairs [何勇同志在全国政务公开领导小组第七次会议上的讲话], Beijing, 21 March 2007.
National People’s Congress (NPC) and the State Council had direct involvement in formulation of national OGI Regulations.

Failed Legislative Endeavor at the NPC

Despite both the NPC’s and State Council’s involvement, the law-making activities of these two powerful organizations generated sharply different outcomes. Many NPC deputies advocated OGI law, arguing that the OGI law would resolve problems that “local OGI rules failed to tackle.”

Li Li, a deputy of the NPC, submitted a proposal to the First Session of the 10th National People’s Congress in 2003, petitioning the NPC to enact a national OGI law. Li said that many local OGI rules exempt disclosing state secrets; however, no rules clearly defined state secrets. Consequently, a national OGI law needed to standardize local OGI legislation activities and “avoid confusion.” Li was just one of many NPC deputies submitting proposals to the NPC for enactment of a national OGI law. NPC Deputies submitted such proposals seven times between 2002 and 2009.


In 2003, the Standing Committee of the 10th NPC listed OGI law in the “secondary priority category” of its five-year legislative plan (2003-2008).\(^\text{607}\) However, since this plan lacked enactment, the NPC decided to postpone indefinitely the legislation of OGI law and allow the State Council to draft *OGI Regulations* first. The explanation for the NPC’s tabling the OGI law from the Internal and Judicial Affairs Committee of the NPC, in 2004, was that the State Council was drafting *OGI Regulations*, and that enactment of OGI law would not occur until after gathering “practical experiences” from implementation of *OGI Regulations*.\(^\text{608}\) Despite the postponement of formulation of the OGI law, the NPC stressed that “it is highly necessary” to adopt OGI law in the future in order to hold government agencies accountable and safeguard the public’s rights to know (*zhiqingquan 知情权*), participate (*canyuquan 参与权*) and supervise (*jianduquan 监督权*).\(^\text{609}\)

The OGI legislative attempt at the NPC failed for several key reasons. First, introducing laws directly without following prior regulatory processes did not coincide with previous

\[^{607}\text{Weiwing Xiao, Freedom of Information Reform in China: Information Flow Analysis 76 (2011). According to legal scholar, Weiwing Xiao, the five-year legislative plan of the Standing Committee of the 10th National People’s Congress classified bills and amendments into two categories. Bills and amendments of first priority should undergo review in the 10th National People’s Congress. Bills and amendments representing secondary priority required research and drafting. Whether or not and when review of second priority bills and amendments would occur remained undetermined.}\]

\[^{608}\text{Report on the Review Results of the Proposals from the Deputies of the Second Plenary Session of the 10th National People’s Congress by the Internal and Judicial Affairs Committee of the National People’s Congress [全国人大内务司法委员会关于第四届全国人民代表大会第二次会议主席团交付审议的代表提出的议案审议结果的报告], Beijing, October 2004.}\]

\[^{609}\text{Report on the Review Results of the Proposals from the Deputies of the Second Plenary Session of the 10th National People’s Congress by the Internal and Judicial Affairs Committee of the National People’s Congress [全国人大内务司法委员会关于第四届全国人民代表大会第二次会议主席团交付审议的代表提出的议案审议结果的报告], Beijing, October 2004.}\]
Chinese law-making practices. In China, lawmakers usually formulate administrative regulations and wait several years to identify problems associated with implementation. Only then can upgrading administrative regulations to administrative laws occur. Second, the NPC legislators may have felt insecurity for possible political and social implications of a national OGI law. Provincial OGI practices indicate that local OGI legislation did not undermine national security, privacy, trade secrets, and other key social interests, but most legislators, in 2004, remained uncertain of political and social consequences that enactment of a national OGI law would entail.

Long-Delayed Legislative Attempt in the State Council

The legislative effort of the State Council to relax government information control began in the late 1990s. In 1997, the National Administration for the Protection of State Secrets recognized a need to revise Law on Guarding State Secrets, adopted in 1988. The law, increasingly and overly restrictive of disclosing governmental information, had a scope so expansive that finding a Chinese document labeled “absolutely secret” in American university libraries was easy, due to the impossibility of the Chinese government maintaining so many secrets. The Administration leaders invited the Law Institute of the

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Chinese Academy of Social Science (CASS)\textsuperscript{613} to assume responsibility for revision of the law. Legal scholar, Hanhua Zhou, and his CASS colleagues began research of OGI under the guise of the neutral-sounding program, “Exploitation, Use and Management of Government Information Resources.”\textsuperscript{614} Zhou created this ruse because OGI remained a politically sensitive topic in China at that time.\textsuperscript{615} OGI was politically unacceptable to the Chinese authorities at the time, a reaction to the failure of Glasnost in the Soviet Union and the close link between freedom of information and freedom of expression.\textsuperscript{616} Authorities had good reason to fear freedom of information. As Western scholars observed, “Access to government information and freedom of expression are intimately linked. In order to form

\textsuperscript{613} The Chinese Academy of Social Sciences (CASS) (\url{http://bic.cass.cn/english/InfoShow/Arcitle_Show_Cass.asp?BigClassID=1&Title=CASS}) is one of the most prestigious official think tanks of the Chinese government. According to the CASS website, the CASS is the highest academic research organization in the fields of philosophy and social sciences as well as a national center for comprehensive studies in China.


\textsuperscript{615} Zhou recalled that he refused the invitation from the National Administration for the Protection of State Secrets at first because of the sensitivity of the task. However, an Administration leader finally persuaded Zhou into taking up the task of law revision. \textsc{Hanhua Zhou, Government Governance and Administrative Law (Preface)} [政府监管与行政法（序言）] (2007).

\textsuperscript{616} Many party elders felt uncomfortable with extravagant levels of freedom of expression enjoyed by people during the Cultural Revolution.
opinions that are worthy of being expressed, individuals must have access to relevant
government information.”  

Largely due to their experiences researching OGI, the Leading Group of National
Informatization (LGNI, guojia xinxihua lingdao xiaozu 国家信息化领导小组) and the State
Council Informatization Office (SCIO, guowuyuan xinxihua gongzuo bangongshi 国务院信息
化工作办公室) chose Hanhua Zhou and his CASS colleagues, in May 2002, to draft OGI
Regulations. The LGNI and the SCIO, two leading agencies consisting of many leaders in
the party, the State Council and the military, received the task of establishing the Chinese e-
government. The two agencies, supported by the policy document, Guidance on Building
E-Government, promoted OGI from the perspective of responding to their assigned
task.

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617 John M. Ackerman & Irma E. Sandoval-Ballesteros, The Global Explosion of Freedom of


619 The LGNI was created in 1999 and reorganized in 2001. The LGNI is headed by Chinese
primers. As the administrative arm of the LGNI, the SCIO, founded in 2001, merged with the
Ministry of Industry and Information Technology in 2008.

General Office of the Chinese Communist Party Central Committee.

The completed academic draft of *OGI Regulations* (scholarly version for comment), submitted to the SCIO in August 2002, solicited comments and suggestions from experts and government officials. The SCIO revised the draft and, in December 2002, submitted it to the State Council Legislative Affairs Office, the ministerial-level administrative agency within the State Council that assists the Premier with legal advice for legislating administrative laws.

However, the State Council Legislative Affairs Office declined to include, immediately, the generation of *OGI Regulations* in its five-year legislative plan because local OGI rule-making activities, begun in 2002, had not yet provided sufficient practical experiences for the State Council to use for national level OGI legislation; in 2002, the State Council Legislative Affairs Office had “little passion” for enacting *OGI Regulations*.

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622 In an email interview with Yanbin Lv, a scholar at the CASS Institute of Law and Hanhua Zhou’s colleague, Lv expressed that he and his CASS colleagues extensively researched freedom of information legislation in the United States, European countries and Japan. They produced a draft of OGI Regulations for submission to the State Council. Foreign legal experts of OGI legislation received invitations from the State Council to comment and suggest additions. This draft, proposed by experts and academics, remains without official publication; however, a book published in August 2003 contains the text. *ACADEMIC DRAFT OF OGI REGULATIONS: DRAFT, EXPLANATION, RATIONALE AND LEGISLATIVE EXAMPLES* [政府信息公开条例专家建议稿-草案、说明、理由、立法例] (Hanhua Zhou ed., Chinese Legal Publishing House, 2003).


As OGI legislation at the city and provincial levels developed in 2006, the central government recognized the timeliness of considering national OGI legislation. In early 2006, Jintao Hu, in a meeting of the Chinese Communist Party Central Politburo, stressed the need to accelerate governmental action.\footnote{628 Ming Tu, \textit{Behind-the-Scene Proponent of OGI Regulations} [政府信息公开条例的背后推手], Phoenix TV, March 21, 2007, \texttt{<http://phtv.ifeng.com/phoenixtv/73013082527367168/20070321/907978.shtml> (last visited November 18, 2012).}} In that same year, the State Council finally listed drafting of OGI Regulations in the “first priority category” of its legislative plan, indicating approval of the law within that year.\footnote{629 Xiaofang Feng, \textit{OGI Regulations Listed on Legislative Plan and Could Be Adopted by the End of 2006} [《政府信息公开条例》入立法计划 有望年内出台], \textit{XINHUA NEWS AGENCY}, March 17, 2006, \texttt{<http://www.gov.cn/jrzg/2006-03/17/content_229647.htm> (last visited November 18, 2012).}} However, the approval did not occur until 2007 when the State Council approved OGI Regulations, in principle, on January 17\footnote{630 New Regulation Approved to Boost Government Transparency, \textit{XINHUA NEWS AGENCY}, January 17, 2007, \texttt{<http://english.gov.cn/2007-01/17/content_499497.htm> (last visited November 18, 2012).}} and after
further revision, published the final version on April 24. OGI Regulations came into force on May 1, 2008, after nearly 30 years of incremental and uneven progress toward greater governmental transparency. China finally broke a millennium-long tradition of governmental secrecy and joined the global community with freedom of information.

**Rationales for the Rise of Freedom of Information in China**

The reasons for the Chinese move toward greater governmental transparency are multifold with both foreign and domestic factors contributing. Among all the external factors, competition for the 29th International Summer Olympic Games is a short-term and superficial one. OGI Regulations became effective on May 1, 2008, just three months before the Olympics in Beijing. For China to be selected to host the Olympics, an event long hoped for by Chinese people, the Chinese government needed greater transparency to garner a favorable international image. Pressure and influence from the United States and the World Trade Organization (WTO), however, was a prominent and long-lasting encouragement for China’s transparent governance and final adoption of OGI Regulations.


Transparency Pressure from the United States and the WTO

China embraced the strategy of reform and engaging the outside world in 1978. One year later, the country established diplomatic relations with its long estranged ideological rival, the United States. The economic and trade exchanges between these two powers soon burgeoned. In the 1980s, the United States began its bilateral investment treaty (BIT) negotiations with China as part of a move to encourage foreign countries, including China, to adopt market-oriented domestic policies that treat private investment in "an open, transparent, and non-discriminatory way."

The negotiations ceased in 1989 as a result of the Tiananmen Square Incident. Negotiations did not resume until 2008.

Although BIT negotiations were not smooth, the United States achieved progress for encouraging China toward greater transparency after a history of obscure trade rules and administrative procedures. In 1992, the United States signed a market access agreement with China. The first article of this document concerns transparency:

The Chinese Government will publish [on] a regular and prompt basis all laws, regulations, rules, decrees, administrative guidance and policies... only laws, regulations, rules, decrees, administrative guidance, and policies that are published and readily available to other governments and foreign traders will be enforced... Any publication...shall include the effective date of these measures... and provide a contact point within each authority from which relevant information can be obtained...The Chinese Government will designate an official journal dedicated to the publication of the items referred to in this Article and all such items will be published in this journal. The Chinese Government will publish this journal on a regular basis and make

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copies of the issues of this journal readily available to domestic and foreign nationals (emphasis added).\textsuperscript{635}

In order to promote closer economic and trade ties with the United States and other countries and resume, as soon as possible, China’s status as a contracting party to the General Agreement on Tariffs and Trade (GATT, later replaced by the WTO), Chinese leaders’ commitment to transparency was serious. In March 1992, The State Council issued a directive to publish all national foreign trade and investment laws, regulations, and policies.\textsuperscript{636}

China’s entry into the World Trade Organization (WTO) in December 2001, and according to its basic dictates, required the country’s trade-related rules and procedures to be transparent. Aligning with WTO rules reached between China and other member countries, China should publish trade-related laws, regulations and other relevant measures and allow wide access before enforcing them; China should also designate an “official journal” to publish relevant legal and policy documents; China should provide an opportunity for people to comment before implementing trade measures; China should establish one or more “inquiry points” to allow inquirers to obtain information within a designated time frame.\textsuperscript{637}

\textsuperscript{635} Memorandum of Understanding Between the Government of the United States of America and the Government of People’s Republic of China Concerning Market Access\textsuperscript{[吴中人民共和国政府和美利坚合众国政府关于市场准入的谅解备忘录]} signed October 10, 1992.

\textsuperscript{636} Notice on Reaffirming the Provisions on Formulation and Publication of Nationally Applicable Foreign Trade and Investment-Related Laws, Regulations, and Policies\textsuperscript{[国务院办公厅关于重申制定、发布全国性对外经贸法规、政策有关规定的通知]} issued by the General Office of the State Council, March 26, 1992.

\textsuperscript{637} Jamie P. Horsley, \textit{Toward a More Open China?}, in \textit{The Right to Know: Transparency for an Open World} 62 (Ann Florini & Joseph E. Stiglitz eds., 2007); Hanhua Zhou, \textit{Basic}
China’s leaders and reformers “take these accession agreements seriously.” They consistently cited WTO’s officially documented obligations to promote greater governmental transparency. For example, Chinese government agencies at all levels conducted a nation-wide review of all the trade-related laws, regulations, and practices to revise and nullify normative documents countering the WTO’s spirit of transparency.

For instance, prior to China’s accession to the WTO in 2001, the governments of the coastal cities of Xiamen and Zhangzhou in Fujian Province created a group responsible for amending or abolishing all trade-related rules, regulations, and normative documents inconsistent with the WTO’s transparency obligations. The latter city reviewed all 303 potentially problematic normative documents, abolished 60 documents and revised 18.

Ten years after China’s accession to the WTO, many leaders and experts spoke highly of the WTO’s encouraging China to greater government transparency. Zhenyu Sun, Considerations in Drafting of Regulations on the Openness of Government Information (Academic Draft) [起草《政府信息公开条例》(专家建议稿)的基本考虑] 6 Chinese Journal of Law 57 (2002).


the first ambassador of China to the WTO and the president of China WTO Research Society, observed that the WTO played “an enormous role” for China’s transparency in legislative processes. Andrew L Stoler, Deputy Director-General of the WTO from November 1999 to October 2002, noted that China’s entry into the WTO improved transparency of Chinese policies. He asked one journalist, “Do you know that foreign trade statistics in China were once state secrets?”

Eagerness to compete in face-lifting global events like the Olympic Games, increasing pressure from the United States and other developed countries to meet transparency obligations as a precondition for enhancing economic and trade relations, among other external factors, contributed to a gradual rise of freedom of information in China. The main motivations underlying Chinese OGI Regulations, however, are largely domestic and internal.

Among all domestic factors that contributed to the rise of freedom of information in China, economic growth and anti-corruption efforts are worthy of mention. Many academics, both Chinese and foreign, view these two factors to be key driving forces for

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adoption of freedom of information legislation in many countries including China.644

Perhaps, these two forces are overly emphasized: As an OGI scholar argued, the
aforementioned two factors “should be accorded important but secondary role in FOI
reform, as they only have a limited and indirect influence on relaxing Chinese information
environment.”645

Four other factors, as FOI expert Weibing Xiao and many other scholars noted, are
largely ignored or discounted in the literature. Actually, these four factors deserve more
scholarly attention: reform-minded top leaders’ political commitment, legal reform for
limiting governmental power and enhancing transparency, improved capacity for
disseminating governmental information, and changes in societal and media
environments.646

Political Commitment from Reform-Minded Top Leaders

Post-Maoist China began the experiment of transparency in villages. The reason for
the movement’s gathering momentum to expand transparency in all levels of Chinese

644 ALASDAIR ROBERTS, BLACKED OUT: GOVERNMENT SECRECY IN THE INFORMATION AGE 110 (2006);
Zhengqun Zhao, Discussion of Anti-Corruption through Openness in Government Affairs [以政务公开反腐败论要] 6 THEORY AND MODERNIZATION 54 (2001); FREEDOM OF INFORMATION: A
COMPARATIVE LEGAL SURVEY (Toby Mendel ed., 2nd edn, 2008); Jamie P. Horsley, Toward a
More Open China?, in THE RIGHT TO KNOW: TRANSPARENCY FOR AN OPEN WORLD (Ann Florini &
Joseph E. Stiglitz eds., 2007); Hanhua Zhou, Open Government in China: Practice and
Problems, in The Right to Know: Transparency for an Open World (Ann Florini & Joseph E.
Stiglitz eds., 2007); COLIN DARCH & PETER G. UNDERWOOD, FREEDOM OF INFORMATION AND THE
DEVELOPMENT DIALOGUE 16 (2002).

645 WEIBING XIAO, FREEDOM OF INFORMATION REFORM IN CHINA: INFORMATION FLOW ANALYSIS 17
(2011).

646 WEIBING XIAO, FREEDOM OF INFORMATION REFORM IN CHINA: INFORMATION FLOW ANALYSIS (2011).
government is mostly political. The experiment would have failed, at the beginning without unswerving political commitment from Chinese political leaders moving toward socialist democracy and rule of law.

Scholars may argue that freedom of information’s concept has deep roots in liberal democratic traditions, thus incompatible with China’s Marxist-Leninist political system. Gorbachev’s 1980s Glasnost failure may further confirm incompatibility.

However, Chinese political leaders feel no strong need to borrow Western democratic principles to support their argument for a law-based, open society. They have particular rationales for greater governmental transparency. First, China, as discussed in Chapter Four, accumulated significant experiences for both governmental transparency and secrecy after several thousand years of civilization. Many practices and ideals for government openness in ancient China could be revived and used for today’s new China.

Second, Chinese political leaders gained determination to gradually build a socialist democracy and rule of law after surviving the ruthless and destructive Cultural Revolution (1966-1976).\(^{647}\) Four democratic means of developing socialist democracy: democratic elections, decision-making, management, and supervision \( (minzhuxuanju \ minzhujuece \ minzhuguanli \ minzhuijandu) \)\(^{648}\) safeguard four democratic rights of Chinese citizens: the right to know, vote, participate, and supervise

\(^{647}\) Xiaoping Deng, 2 Selected Works of Xiaoping Deng 168 (2nd ed., 1994).

\(^{648}\) Zemin Jiang, Build a Well-off Society in an All-Round Way and Create a New Situation in Building Socialism with Chinese Characteristics [全面推进小康社会，开创中国特色社会主义事业新局面], speech delivered at the 16th National Congress of the Chinese Communist Party, Beijing, November 2002; Eleventh Five-Year Plan Outline of the People’s Republic of China for National Economy and Social Development [中华人民共和国国民经济和社会发展第十一个五年规划纲要], Beijing, March 2006.
Lack of transparency would eviscerate the four democratic means and the four democratic rights.

Third, Chinese political leaders found ideological support from leading Marxists that support transparency and freedom of information. Marx, Engels, and Lenin recognized the value and necessity of transparency for building communism and socialism. Zedong Mao supported transparency, although he basically failed to follow his own policy after 1949. Enlai Zhou, the first premier of China, was an advocate of governmental

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650 Marx stressed the importance of openness when he discussed the experiences of the Paris Commune. He said, “[T]he Commune did not pretend to infallibility...It published its doings and sayings; it initiated the public into all its shortcomings.” KARL MARX & FRIEDRICH ENGELS, 22 MARX AND ENGELS COLLECTED WORKS 340 (1986).

651 Engels stressed the importance of openness when he discussed the conflict between the right to privacy and public affairs. He said, “Privacy should be protected according to law. However, when privacy associates with the most important public interest, privacy is no longer privacy. Instead it becomes a part of politics and should unavoidably be covered by the press.” Officials Should Not Consider Information Requester as Freak [官员信息公开,应剔除“一公开就异类”思维], XINMIN EVENING NEWS, February 29, 2012, <http://opinion.people.com.cn/GB/17253572.html> (last visited November 18, 2012).

652 Lenin said that “Everyone will probably agree that ‘the broad democratic principle’ presupposes the following two conditions: first, full publicity and secondly, election to all offices. It would be absurd to speak of democracy without publicity, moreover, without a publicity that is not limited to the membership of the organization. We call the German Socialist Party a democratic organization because all its activities are carried out publicly; even its party congresses are held in public. But no one would call an organization democratic that is hidden from everyone but its members by a veil of secrecy [emphasis added].” V LENIN, 5 LENIN COLLECTED WORKS 477 (1961).

653 Mao relied on the Mass Line to support transparency. The Mass Line is a leadership method developed by Mao. According to the method, ideas arose “from the masses” and
transparency and said that the masses should be informed of any changes in policy to allow the party’s gaining understanding and support.654

“Leading Marxists’ support of transparency suggested that [Chinese] reformers would not make any serious political mistakes if they undertook transparency reform.”655 Post-Mao Chinese political leaders thus embarked on a campaign for greater governmental transparency despite the topic’s sensitivity. Xiaoping Deng, the core leader of the Chinese Communist Party’s second generation,656 embraced enthusiastically the concept of an “information society” in the 1980s.657 Although Deng’s original intent of publicizing the

then ideas turn into policies. The policies should return “to the masses” for comment and criticism to allow adjustment. In 1948, Mao directed governmental officials to change their secretive styles to inform the public of land reform policies in order to gain support and implement policies. However, he became increasingly secretive after assuming office in 1949. The Mass Line remains an adoption of the Chinese Communist Party today. ZEDONG MAO, 4 COLLECTED WORKS OF ZEDONG MAO 1318-1319 (2nd edn., 1961). WEIBING XIAO, FREEDOM OF INFORMATION REFORM IN CHINA: INFORMATION FLOW ANALYSIS 41-42 (2011).


655 WEIBING XIAO, FREEDOM OF INFORMATION REFORM IN CHINA: INFORMATION FLOW ANALYSIS 42 (2011).

656 Zedong Mao is widely considered as the core leader of the Chinese Communist Party’s first generation.

“information society” was to achieve the party’s goal of modernizing the country, economically, application to governmental transparency is undeniable.

Ziyang Zhao, Deng’s handpicked successor for party leadership in the 1980s, was a strong proponent of transparent government. In his report to the 13th National Party Congress in 1987, Zhao exhorted leading agencies to improve the openness of activities and allow people’s familiarity and discussion of important matters.\(^658\)

Although Deng dismissed Zhao due to the Tiananmen Square Incident in 1989 and China lost momentum for political reform since, Zhao’s successor, Zemin Jiang, continued progress toward transparency.\(^659\) Jiang first introduced the concept of open government when reporting to the 15th National Party Congress in 1997\(^660\) and stressed the need to implement further a system of open government in 2002 in a report to the 16th National Party Congress.\(^661\) From Deng to Jiang, clearly, open governmental information was no

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\(^{658}\) Ziyang Zhao, *Take Strides along the Road to Socialism with Chinese Characteristics* [沿着有中国特色的社会主义道路前进], speech delivered at the 13th National Party Congress, Beijing, October 1987.

\(^{659}\) Jiang has been officially referred to as the core leader of the party’s third generation.


\(^{661}\) In this report, Jiang stated, “The departments handling affairs of immediate concern to the people should carry out an open administrative system to make sure what they do is fair, just and open (emphasis added).” Zemin Jiang, Report to the 16th National Party Congress, Beijing, November 2002.
longer a technological and economic issue. Jiang moved closer to establishment of a nationwide disclosure system.\textsuperscript{662}

Jintao Hu and Jiabao Wen\textsuperscript{663} openly acknowledged the values of establishing a transparent government. In March 2004, during the NPC annual meeting in Beijing, Wen advocated a system of “open government information” to enhance the transparency of governmental operations.\textsuperscript{664} In 2007, Hu emphasized importance of official transparency in a report to the 17th National Party Congress.\textsuperscript{665} Hu affirmed the party’s and the government’s guaranteeing “the people’s rights to be informed, to participate, to be heard,

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\textsuperscript{662} Both Deng and Jiang approved of using foreign media to publicize the party and official policies on various issues. Apparently, Jiang was even more willing and skillful in dealing with foreign journalists, exemplified by the 1986, 85-minute interview with CBS’s Mike Wallace, and another 3-hour 57-minute interview in August 2000 with the same journalist, during which Jiang answered all the 88 pointed questions. Yan Shi, Xiaojia Zhu, Xiaohan Shi & Shu Wang, \textit{Behind-the-Scene Story About CBS Journalist Wallace’s Interview with Zemin Jiang} [华莱士采访江泽民内幕全曝光], \textit{SOUTHERN METROPOLIS DAILY}, April 14, 2012, <http://big5.ifeng.com/gate/big5/news.ifeng.com/history/jhongguoxiandaishi/detail_2012_04/13885730_0.shtml> (last visited November 18, 2012).

\textsuperscript{663} Hu is the incumbent Chinese president and Wen the incumbent premier. Unlike Mao, Deng and Jiang, Hu has never had official reference as “core leader” of the “Fourth Generation.” The subtle change of the term indicates a trend toward more collective leadership at the top.


\textsuperscript{665} Jintao Hu, \textit{Hold High the Great Banner of Socialism with Chinese Characteristics and Strive for New Victories in Building a Moderately Prosperous Society in All Aspects} [高举中国特色社会主义伟大旗帜为夺取全面建设小康社会新胜利而奋斗], speech delivered at the 17th National Party Congress, Beijing, October 2007.
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and to oversee” and explicitly observed “power must be exercised in the sunshine to ensure that it is exercised correctly.”

Legal Reform for Limiting Government Power and Enhancing Transparency

After the Cultural Revolution (1966-1976) ended, Chinese political leaders, including Deng, realized the lawless situation in the country was dangerous and rebuilding the shattered legal system was vital. Deng, Jiang, and Hu, three generations of Chinese communist leadership, followed the policy of gradually establishing a socialist legal system with Chinese characteristics. By the end of August 2011, China had enacted 240 laws including the current Constitution, 706 administrative regulations, and over 8,600 local regulations. Among all those laws and regulations, many have provisions limiting governments’ powers. Over 80 laws and administrative regulations include provisions stipulating the obligation of official agencies’ greater transparency, and implementation

666 Jintao Hu, Hold High the Great Banner of Socialism with Chinese Characteristics and Strive for New Victories in Building a Moderately Prosperous Society in All Aspects, speech delivered at the 17th National Party Congress, Beijing, October 2007.


669 Explanation of the State Council Legislative Affairs Office on Draft OGI Regulations, No.244078, Beijing, 2006.
of those laws has relaxed the restrictive, secretive Chinese informational environment, thereby creating an atmosphere conducive to the rise of freedom of information.\footnote{670}{For how administrative law reforms contributes to the rise of freedom of information in China, see WeiBing Xiao, Freedom of Information Reform in China: Information Flow Analysis 51-59 (2011).}

In 1982, adoption of the Chinese Constitution\footnote{671}{Constitution of the People’s Republic of China (adopted on December 4, 1982), <http://www.npc.gov.cn/englishnpc/Constitution/node_2824.htm> (last visited November 18, 2012). There are three previous versions of the constitution, including those of 1954, 1975 and 1978, which were repealed.} was a landmark event for the movement toward greater governmental transparency because the supreme law limits many aspects of governments’ powers and implies the people’s right to know. The Constitution states that all the power in China belongs to the people,\footnote{672}{Constitution 1982, Chap. 1, Art. 2.} all state agencies, political parties, and public organizations must abide by the Constitution and the law, and all actions in violation of the Constitution or other laws require investigation.\footnote{673}{Constitution 1982, Chap. 1, Art. 5.} All government agencies and officials must accept supervision of the people.\footnote{674}{Constitution 1982, Chap. 1, Art. 27.} Without the people’s right to know, the people cannot gain insight into operations of government activities or supervise agencies and officials.

The subsequent four amendments to the 1982 Constitution further enhanced the rule of law and greater transparency. The 1988 amendment protects lawful rights and interests of the private sector of the economy,\footnote{675}{Amendment to the Constitution of the People’s Republic of China} thus encouraging more people to create
private enterprises. Increased economic freedom leads to people’s increased need for information from the government. According to the 1993 amendment, the state no longer follows a planned economy, instead, it strives for a socialist market economy.676 This new emphasis on the role of the market allows expansion of transparency because a market-based economy is conditional on free flow of information. The 1999 amendment states that governing the country and building socialism must be from the rule of law.677 This revision laid a solid constitutional foundation for nurturing all transparency-related laws and regulations in China. The 2004 amendment states that lawful private property is inviolable, the state shall compensate for expropriation, and the state must respect human rights.678 These revisions furthered China’s move to the rule of law.

(adopted on April 12, 1988),

676 Amendment to the Constitution of the People’s Republic of China (adopted at the First Session of the Eighth National People’s Congress and promulgated for implementation by the announcement of the National People’s Congress on March 29, 1993),

677 Amendment to the Constitution of the People’s Republic of China (adopted at the Second Session of the Ninth National People’s Congress and promulgated for implementation by the announcement of the National People’s Congress on March 15, 1999),

678 Amendment to the Constitution of the People’s Republic of China (adopted at the Second Session of the Tenth National People’s Congress and promulgated for implementation by the announcement of the National People’s Congress on March 14, 2004),
Administrative laws and regulations, adopted or revised since the 1980s and were consistent with the spirit of the Constitution, promoted law-based administration. In general, adoptions or revisions limited the power of the government and made administrative procedures and decisions less arbitrary and opaque, thus facilitating the flow of information between government, the civil society and citizens.

*Archives Law 1988* is a good example. According to the revised *Archives Law* and *Provisions for the Implementation of the Archives Law*, records in the Chinese state archives created prior to 1949 have become publicly accessible as of 1999. Archives created after 1949 become "open to society" 30 years after their dates of origin. Economic, scientific, technological and cultural archives are accessible at any time. Various media, including newspapers, radio, television, and the Internet are to disseminate information concerning opened archives. Any Chinese citizens with proper identity cards and even foreign nationals with proper authorization from relevant archival agencies have the right


680 *Archives Law* was adopted by the National People’s Congress in 1988 and revised in 1996.


683 *Provisions for the Implementation of Archives Law, Article 23.*
to inspect opened archives. The adoption and revision of Archives Law allowed the Chinese public unprecedented access to millions of government records and documents, previously sealed indefinitely in ancient China and the pre-Deng communist regime.

The progression of laws for guarding state secrets is another valuable case. As discussed in Chapter Four, rulers of ancient China frequently used similar laws to deter and criminalize leaking classified information. During the Mao’s rein (1949-1976), any information from the government could gain listing as a state secret because the definition of state secrets in the 1951 Interim Regulations on Guarding State Secrets was expansive. The scope of state secrets finally narrowed from 17 categories of information in Interim Regulations to seven in Law on Guarding State Secrets 1989, which classified information into three categories of escalating sensitivity: “confidential,” “secret,” and “top secret,” with each category having a correspondingly higher degree of protection.

As the law for protecting classified information showed subtle signs of relaxing informational control in the late 1980s, unsurprisingly, China announced declassifying new

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684 Implementation Measures for Archives Law of the People’s Republic of China, The State Archives Bureau Order No. 1 (effective 19 November 1990); Procedures to Open Records at Every Level to the Public, the State Archives Bureau Order No. 2 (effective 26 December 1991); Trial Procedures for Foreign Organizations and Individuals to Use Chinese Archives, the State Archives Bureau Order No. 3 (effective 1 July 1992). William W. Moss, Dang’an: Contemporary Chinese Archives, 145 THE CHINA QUARTERLY 112, 116 (March 1996).

685 Repeal of 1951 Interim Regulations on Guarding State Secrets occurred in 1989 with the adoption of Law on Guarding State Secrets. Interim Regulations enumerated 17 categories of information as state secrets including the states’ expenditures and budgets.


national laws as secret. Previously, issuing all regulations approved by the State Council was “in documents with red characters designating them as restricted.” As mentioned earlier, in the late 1990s, the National Administration of Protecting State Secrets invited Huanhua Zhou to participate in the revision of the law, thus establishing a link between freedom of information legislation and state secrecy laws.

In September 2005, the National Administration of Protecting State Secrets boldly announced that China would no longer classify death tolls from natural disasters as state secrets. This move, prompted by the issuance of a notice from the Ministry of Civil Affairs, facilitated distribution of crisis information. In April 2010, the National People's Congress approved the newly amended law, Law on Guarding State Secrets, whose revisions narrowed the definition of “state secrets” and increased the administrative rank


of governmental departments having authority to classify information as state secrets. More importantly, the newly revised law states that classified information should not be forever inaccessible. Declassification of a secret should be automatic once the term for guarding it expires. Publication of the draft, appearing in 2012, of *Rules for the Implementation of the Law Guarding State Secrets* clarifies nine kinds of state secrets and standardizes the procedure for classifying certain official information as state secrets. All these amendments are clear, significant steps toward greater flow of information in China.

Other legal reforming initiatives dealing with health crisis are reflections of increasing willingness of government agencies and officials to share information with the people. In 2003, the State Council introduced *Regulations on Preparedness for and Response to Emergent Public Health Hazards* to cope with the outbreak of SARS. *Regulations* required all levels of agencies to disclose relevant health crisis information in a "timely,

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694 *Law on Guarding State Secrets 1989*, Article 15, revised and adopted by the National People's Congress in 2010. According to the revision, “top secrets[绝密]” shall remain sealed no more than 30 years, “secrets[机密]” shall be classified no more than 20 years, “confidential information[秘密]” shall be closed no more than 10 years.


696 *Regulations on Preparedness for and Response to Emergent Public Health Hazards 2003*.

697 SARS is abbreviation of Severe Acute Respiratory Syndrome, a viral respiratory disease in humans.
accurate, and comprehensive” manner.\textsuperscript{698} China modified \textit{Law on the Prevention and Cure of Infectious Diseases} in 2004, adding SARS to the second class of infectious diseases requiring health agencies at all levels to disclose regularly epidemic information.\textsuperscript{699} Three years later, China enacted the more ambitious \textit{Emergency Response Law}, compelling government agencies at all levels to report emergency information to higher levels of government and the general public in a “unified, accurate and timely” manner.\textsuperscript{700} According to the draft of the \textit{Emergency Response Law}, news organizations that publish emergency information without proper authorization and/or release fraudulent emergency information incur fines if the reports lead to serious consequences. Fearing that local officials might use provisions to cover-up emergency incidents, legislators removed the provisions from the law.\textsuperscript{701}

In order to promote further administrative law reform, the State Council published, in 2004, \textit{Implementation Outline for Pushing Forward Administration by Law in an All-Round Way}.\textsuperscript{702} \textit{Implementation Outline} states, in a manner reminiscent of the statutory language of \textit{OGI Regulations}, adopted three years later:

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\textsuperscript{698} Regulations on Preparedness for and Response to Emergent Public Health Hazards 2003, Article 25.

\textsuperscript{699} Prevention and Cure of Infectious Diseases Law 1989, Article 38.

\textsuperscript{700} Emergency Response Law 2007. Art.53.


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Administrative agencies must disseminate any information with the only exception of information concerning state secrets, commercial secrets and personal privacy. The citizens have the right to examine government information that is disclosed. Administrative agencies shall provide convenient conditions for such public inspection.\textsuperscript{703}

These legal reform initiatives dramatically increased the flow of information from the government to society in China, thus creating a more favorable environment for consolidation of OGI legislation.\textsuperscript{704}

\textit{Improved Government Information Dissemination Capacity}

The improved capacity of the government in the early 2000s to disseminate information is another factor worthy of attention. The progress of the e-government program, especially the creation of official and social media websites for official agencies and functionaries at various levels, and the establishment of the system for governmental spokespersons contributed to enhancing China’s capacity to share information, not only among officials at different levels but also between the bureaucracy and Chinese citizens.

Nations throughout the world embrace electronic government (e-government),\textsuperscript{705} and China is no exception. China initiated a program of e-government in the early 1980s,

\textsuperscript{703} \textit{Implementation Outline for Pushing Forward Administration by Law in An All-Round Way} [全面推进依法行政实施纲要] issued by the General Office of the State Council, March 22, 2004.

\textsuperscript{704} For more detailed analysis of how administrative law reforms contributes to the rise of freedom of information in China, see Weibing Xiao, \textit{Freedom of Information Reform in China: Information Flow Analysis} 51-59 (2011).

\textsuperscript{705} According to the World Bank, e-government refers to the use by government agencies of information technologies (such as Wide Area Networks, the Internet, and mobile computing) that have the ability to transform relations with citizens, businesses, and other arms of government. These technologies can serve a variety of different ends: better delivery of government services to citizens, improved interactions with business and industry, citizens’ empowerment through access to information, or more efficient governmental management. The resulting benefits can be less corruption, increased
followed by implementation of 12 “Golden Projects” ranging from “Golden Cards” (to create unified banking systems) to “Golden Tax” (to curb tax evasion)\textsuperscript{706} in the 1990s. In 1998, creation of the Ministry of Information Industry further promoted e-governance, and in the late 1990s and early 2000s, establishing the Leading Group of National Informatization and the State Council Informatization Office led to policy formulation and implementation of e-government programs. This “e-government” program finally created a Chinese governmental Intranet enabling agencies and officials at various levels and different localities to share information efficiently.\textsuperscript{707}

\begin{itemize}


As a part of the e-government effort, government agencies and even party organizations ranging from the central, provincial, city levels to the county and even township levels launched official websites to increase information flow between the bureaucracy and citizens. The Government Internet Project, which began in 1999, prompted the action. The number of Chinese government websites with the domain name gov.cn increased from 1470 in 1999 to 28,575 in 2007. At the provincial, city, and county levels, 100%, 93%, and 69% have government websites, respectively.

Most of the party is lagging the government in the creation of official websites. Some party organizations launched official web portals, such as the International Department of the Communist Party (http://www.idcpc.org.cn/index_zhongwen.htm) and the United Front Work Department of the Communist Party (http://www.zytzb.org.cn/). However, most central party agencies (e.g., the Chinese Communist Party Central Committee, the Central Propaganda Department, the Central Organization Department) are still invisible on the World Wide Web. Party committees at provincial, city, county and township levels either have no official websites or share the same websites with their corresponding governmental agencies. For example, the party committee and the government in Bazhong City, Sichuan Province, use the same website (http://www.cnbz.gov.cn/swld/lg/). The same is true for the party and governmental agencies in Wenchuan County, Sichuan Province (http://www.wenchuan.gov.cn/).


ministry-level agencies have websites;\textsuperscript{712} the central government launched its official web portal in late 2005.\textsuperscript{713}

Some Chinese agencies and officials are sufficiently open-minded toward dissemination of information that even technologically savvy, Internet-oriented youth would have admiration. Since the early 2000s, agencies and officeholders began creating governmental online forums, blogs and micro-blogs to facilitate exchanging information between the public and the government. The Department of Public Security in Hebei Province was the first administrative agency in Mainland China to create an official blog.\textsuperscript{714} In 2006, Yong Fu, the mayor of Lingao County, Hainan Province, became the first blogger among government officials in China when he created an account, with his true identity and cell phone number, on a popular Chinese social networking site.\textsuperscript{715}

\textsuperscript{712} Most ministries and commissions under the State Council launched their official websites, with a few exceptions such as the Ministry of State Security.


Online, governmental forums provide “fascinating spaces for politically active citizens to engage in public discourses.” Similarly, the use of social media has enhanced the ability of officials’ and citizens’ sharing timely information engagingly.

Establishment of press conferences and a system of official spokespersons added another layer of mechanism for timely distribution of public information. Press spokespersons are common in Western liberal democracies; China began experimenting with a similar system in 1983 when the press officer from the Ministry of Foreign Affairs made his first public appearance.

The work made sluggish progress until 2003 when the SARS crisis created a public relations disaster for the government. Since then, many central and provincial agencies

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717 The author of this study was a Washington-based correspondent of People’s Daily from 2004 to 2007. One important responsibility was to attend, regularly, press conferences organized by spokespersons from various U.S. administrative and legislative agencies including the White House, the Department of Defense, the State Department and the Capitol Hill.


established positions for spokespersons. The arrangements extended to agencies at various levels in 2004. The structure strengthened in 2005 when the State Council, with more than 70 ministry-level agencies and commissions, 27 provinces, and autonomous regions, established specific positions for press secretaries. Spokespersons received frequent training for conducting press conferences and dealing with Chinese and foreign journalists.

The former director of the State Council Information Office, the agency responsible for training and guiding government public relations professionals, contended that press secretaries “play a vital role in promoting government information release.”

The availability and expertise of press secretaries for various administrative agencies enhanced the willingness and capability of the government to disclose

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724 The Communist Party is establishing a similar system that applies to various levels of party committees and party organizations. Chen Wang, *Vigorously Push Forward*
information to the public and augmented the government’s willingness to national OGI Regulations.\textsuperscript{725}

\textit{Changed Societal and Media Environment}

China experienced profound changes in its social and media environments since the late 1990s and early 2000s. As China entered the social, conflict-prone period, information of major social crises is abundant. The spread of crisis information among citizens is unprecedentedly easy and rapid since the new media allows any Chinese individual with access to the Internet to produce and distribute information, globally, with just a click of the mouse. The new scenario presented a threat to social stability and challenged the legitimacy of the party and the government. The changed societal and media environments\textsuperscript{726} prompted the Chinese government to abandon its old-fashioned,

\textit{Construction of System of Party Committee Press Secretaries} [积极推进党委新闻发言人制度建设], 20 Qiushi (2010), 

\textsuperscript{725} For how the establishment of governmental press secretaries system contributes to the rise of freedom of information in China, see Weibing Xiao, \textit{Freedom of Information Reform in China: Information Flow Analysis} 27-37 (2011).

restrictive, and secretive management of information and embrace a new mode of proactive disclosure. This tremendous change gave OGI reform “a workable foothold in the Chinese information environment.”

The Chinese bureaucracy had long been comfortable with restricting free flow of crisis information due to political, philosophical and cultural, technological, psychological or economic factors. The Chinese information environment became less

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728 Chinese officials tend to report only good news about his jurisdiction to their supervisors but are reluctant to report bad news, fearing that they may lose their positions or create a negative impression on their supervisor’s minds (baoxi bu baoyou 报喜不报忧). Vigorously Fight Against Unhealthy Practices of Reporting Only Good News, Rather Than Bad News [坚决纠正报喜不报忧的不良风气], People’s Daily, September 10, 2001, at 1, <http://www.people.com.cn/GB/guandian/26/20010910/555626.html> (last visited November 18, 2012).

729 As discussed in Chapter Four, both Confucianism and Taoism persuade officials to handle information in a secretive and reactive manner. Although Legalism embraces disclosure of laws and regulations, its attitude toward free flow of information is even more restrictive than Confucianism and Taoism with regard to any other category of information. Despite long suppression by rulers, Mohism has the greatest potential for developing avocation for governmental transparency.

730 In China, the lack of effective technological tools to disseminate information as quickly as possible and as widely as possible has long hampered dissemination of information. Traditional media, such as notice boards, court gazettes, short reports and newspapers contributed to the flow of information in ancient China, but the speed and scope of distribution was primitive by modern and contemporary standards. In addition, the cost of censoring traditional media content was low.

731 Chinese officials tend to view the masses as individuals who have low mental capacities and could be easily agitated. Officials argued that the masses, informed of crises, would panic causing destabilization. Concealing crises’ information could restrain public panic. Linda Chen & Junín Chen, On Impediments to Information Flow During Crisis of Songhuajiang River Contamination [松花江水污染事件中信息流障碍分析], 6 Journal of Press Circles 21 (2005); Dalin Sheng, It Is Encouraging to Find that Government Has Not Covered up Sensitive
and less restrictive after 1978 when the country adopted the fundamental policy of reform and engagement with the outside world. Economic liberalization, initialed by Xiaoping Deng and his communist colleagues, created greater need and freedom for information exchange among citizens. The flow of crisis information between the government and the society, however, remained limited for two major reasons:

First, social conflicts began to emerge in the 1980s and 1990s as the Chinese people began a monumental social transformation from communism to economic capitalism. However, most people, in general, were happy with economic reform and openness, and thus optimistic for the future. The scarcity of social crises during these 20 years was insufficient to promote widespread distribution of crisis information.

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732 Nobel Prize-winning economist Joseph E. Stiglitz argued for the necessity of freedom of information in political life from the perspective of information economics. He contended an inherent tendency in all governmental power, democratic or nondemocratic, to practice secrecy because asymmetry or imperfection of information provides ample opportunities for incumbents to pursue careers and deter political rivalry. Consequently, the United States and the U.K., the two most transparent governments in the world, continue to maintain many secrets that should have disclosure. Joseph E. Stiglitz, On Liberty, the Right to Know, and Public Discourse: The Role of Transparency in Public Life, Oxford Amnesty Lecture, Oxford, U.K., January 27, 1999, <http://derechoasaber.org/documentos/pdf0116.pdf> (last visited November 18, 2012); The Right to Know: Transparency for an Open World vii-viii (Ann Florini & Joseph E. Stiglitz eds., 2007).

733 The 1989 Tiananmen Square Incident was one such social conflict. It is widely believed that most student demonstrators did not want to overthrow the Chinese Communist Party. They just wanted the party to engage in meaningful political reforms to deal with corruption and social injustice.

734 Many popular songs produced in the 1980s in Mainland China indicated a strong sense of optimism and hope, reflecting, in part, the collective mood of the Chinese.
Second, the government was willing and capable of restricting informational flow in the pre-Internet age by controlling and censoring traditional media outlets. Under Mao’s rule, China established a Communist press system extending from the central level to the county level. News media became a component of the party and governmental institutions, and censors at all levels attended closely to the operations of the media to assure nondisclosure of inappropriate content. As media became increasingly commercialized in the 1990s, control of the press relaxed to some degree. However, the media’s role of spokesperson remains unchanged. In such a restrictive environment for media, government officials and news media gatekeepers easily suppressed distribution of crisis or controversial information by downplaying newsworthy items or simply ignoring them.

The social and media environment, however, changed considerably in the early 2000s, when information of official misconduct and corruption, food and drug safety

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concerns, public health problems, environmental pollution, clashes among residents, developers and local governments in land disputes flooded the media. Social unrest rose for complex reasons:739 “Mass incidents,” including riots, strikes, demonstrations, and protests, increased from 8,700 in 1993 to 74,000 in 2004.740 “Public order disturbances”741 rose by 6.6 percent during 2005, to 87,000.742 As one American academic noted, “By the

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741 Chinese authorities use two different terms (“mass incidents” and “public order disturbances”) to describe social unrest. This approach complicates direct comparisons between them.

early 21st century, social unrest had become a normal feature of Chinese society.” The avalanche of social unrest provided sufficient fodder for distribution of information of crises, rumors, or unverified explanations.

Complicating the situation were the party’s and the government’s increasing sense of restraint for their abilities to control the changing media, which attempted to report social crises.

First and foremost, the traditional media became increasingly independent during the post-Mao reform era as they strove to survive and prosper in the market. Chinese traditional party-run or government-run media, such as the China Central Television and People’s Daily played an expanding role as watchdog of the government. Many prominent

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744 According to Peterson and Gist, rumor means “an unverified account or explanation of events, circulating from person to person and pertaining to an object, event or issue of public concern.” Warren A. Peterson & Noel P. Gist, Rumor and Public Opinion, 57 The American Journal of Sociology 159 (1951).

745 Former Chinese Premier Zhu Rongji praised a China Central Television news program as “a mirror and watchdog of the government and a supervisor of the government through public opinion.” Jiafei Yin, Beyond the Four Theories of the Press: A New Model for the Asian and the World Press, 10 Journalism & Communication Monographs 3, 25 (2008); People’s Daily was successful in uncovering the 2001 scandal of the concealment of mining water leakage which killed 81 coal miners in Nandan County, Guangxi Province. The leadership in Nandan County and the coal owners decided to hide the catastrophe. The journalists of People’s Daily based in Guangxi exposed the disaster. The major players in this scandal received severe punishments, including execution of the party secretary of Nandan County. This is the first major man-made disaster gaining exposure by journalists in the People’s Republic of China. Xinghang Huang, Wenbin Fei & Jian Huang, “I Am An Ungrateful and Disloyal Man [“我是个不忠不孝的人”], People’s Court Daily, February 21, 2004, at 4,
market-oriented print media outlets, such as *Caijing* magazine, the *China Youth Daily’s* Freezing Point, and *Southern Weekend* have reputations, in China, for aggressive investigative journalism. Shuli Hu, former editor of *Caijing*, earned the title of “the most dangerous woman in China” for her role in publicizing high-profile financial scandals. Internal reports also frequently expose problems throughout the country, indict corrupt officials, and criticize official misconduct. A newly established Internal Reference News

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746 *Caijing*’s driving mission is to have an “independent standpoint, exclusive coverage and unique perspective.” *Caijing*’s official website: <http://english.caijing.com.cn/> (last visited November 18, 2012).

747 *China Youth Daily*’s Freezing Point is a very popular news column known for its aggressiveness and candidness in reporting significant social issues. Its official website: <http://zqb.cyol.com/node/node_6443.htm> (last visited November 18, 2012).

748 The *Southern Weekend*’s official website: <http://www.infzm.com/> (last visited November 18, 2012).


750 Party and government leaders enjoy exclusive access to internal reports that cover sensitive subjects regularly. Traditional party and governmental mainstream news organizations publish these confidential periodicals on a regular basis. These confidential publications often have large volumes of crisis information. The journalistic internal reports will be examined in depth in Chapter Eight.

751 For examples of exposure and discipline of corrupt officials during China’s reform era by internal reports, see *Garbage Collectors Take away Two-Million-Yuan Deposit Book Mistakenly Abandoned by Zhiye Wang’s Wife* [男子收废品收走郑州原纪委书记百万巨款存款], Phoenix TV, Hong Kong, May 6, 2009, <http://news.ifeng.com/society/5/200905/0506_2579_1141864.shtml> (last visited November 18, 2012); Ruoqiao Liang, *For Whose Eyes Only?* GLOBAL TIMES, August 24 2010,
Department of *People’s Daily* plans to compete aggressively with Xinhua News Agency in quality and quantity of internal reports. All changes in the traditional media facilitated dissemination of crisis or controversial information that many officials prefer to remain permanently sealed.

Another equally important development for media that hampered the government’s ability to restrict the flow of information is the expansion of the Internet and citizen-journalism. As China enters the 21st century, the country has been gaining parity with many technologically developed countries for construction and use of the Internet. By December 31, 2009, the number of Chinese Internet users reached 384 million and penetration of the Internet reached 28.9%.\(^{752}\) China’s Internet population grew rapidly and reached 513 million people at the end of 2011, among them nearly 257 million are frequent users of social networking sites.\(^{753}\) In the meantime, increasing numbers of Chinese, urban or rural, are subscribers of resources provided by mobile phones. These users in China represent a record of 1.03 billion at the end of April 2012, and 159 million are users of terminals based

\(^{752}\) [Statistical Survey Report on Internet Development in China (January 2010)].

on third-generation technologies, indicating that access to the Internet with cell phones is convenient and common.\(^{754}\)

New media allows the flow of information among media, citizens, and the civil society extremely easy and inexpensive. Any Chinese citizen can become a citizen-journalist by distributing information globally, thereby eroding the traditional media’s ability to establish an agenda.\(^ {755}\) The publisher of *People’s Daily* warned the elite, traditional media in China of the danger of “becoming marginalized” in the era of microblogging.\(^ {756}\) The warning is not an exaggeration. For example, during the 2008 Sichuan earthquake, a cell phone recorded the first live video; its posting on the Internet by a university student occurred within 10 minutes of the quake and eight minutes prior to official announcement.\(^ {757}\) Professional journalists use the Internet as a platform to publish sensitive articles, unacceptable to traditional media.\(^ {758}\)


\(^{757}\) The video, first posted to Tudou, similar to YouTube, had roughly 1.8 million hits and
In the meantime, new media created a disproportionately high cost and difficulty for government officials to control the flow of information. China currently has one of the most filtered and censored Internet environments, but Internet censorship “cannot keep up with the spread of information,” and produces an environment that is “increasingly difficult for the government to regulate what information is accessed.” Some officials confessed, “We can prevent one journalist from reporting bad news, but we cannot prevent all journalists from doing so; or even if we can require all journalists not to report bad news, we are still incapable of asking all citizens not to expose it.”

international media groups, such as CNN forwarded the recording.

Although Chinese citizens have domestic social networking sites, such as Weibo, Tudou and QQ, many foreign social networking websites, including YouTube, Twitter, and MySpace are unavailable in Mainland China, and China filters or removes much sensitive Internet content. The blocking system is dubbed “the great firewall of China.” Michael Bristow, China’s Internet Spin Doctors, BBC, December 16, 2008, <http://news.bbc.co.uk/2/hi/asia-pacific/7783640.stm> (last visited November 18, 2012); OPENNET INITIATIVE, INTERNET FILTERING IN CHINA IN 2004-2005: A COUNTRY STUDY (Berkman Center for Internet & Society, Harvard University, April 13, 2005), available at <http://cyber.law.harvard.edu/publications/2005/Internet_Filtering_in_China_in_2004_2005> (last visited November 18, 2012); For political implications of Internet use and censorship in China, see Xiaoru Wang, Behind the Great Firewall: The Internet and Democratization in China (2009) (unpublished Ph.D. dissertation, The University of Michigan) (on file with author).


The Severe Acute Respiratory Syndrome (SARS)\textsuperscript{763} incident in 2003 provides a good example to illustrate the severe consequences of delaying proactive disclosure of official information in the Internet age. The mysterious SARS flu first appeared in Guangdong Province and rapidly spread to other areas. However, government restrictions disallowed traditional media from reporting this epidemic at the time of the crisis.\textsuperscript{764} Instead, censors instructed reports to cover, heavily, the Iraq War.\textsuperscript{765} Knowing that obtaining reliable information of the flu from the traditional media and the government was unlikely, Chinese citizens began using cell phones to forward text messages about the epidemic.\textsuperscript{766} They also used the Internet, landline telephones and word-of-mouth to seek and disseminate relevant information.\textsuperscript{767}

\textsuperscript{763} The SARS crisis occurred in China between November 2002 and August 2003, infecting 5,327 individuals and causing 349 fatalities.

\textsuperscript{764} Local Chinese governments maintained secrecy for the spread of the SARS virus and imposed a news blackout.

\textsuperscript{765} Mu Qiao, \textit{Communication Effects and Political Impact of SMS Messages} [手机短信的传播效果与政治影响], \textit{4 Journal of Contemporary Communications} 76 (2008).

\textsuperscript{766} According to the Guangdong Mobile Communication Co., Ltd., 40 million text messages transmitted on 8 February 2003, with an increase of one million the next day, and five million on 10 February. Most of these text messages related to the outbreak of the SARS flu. Guoqiang Yun & Pin Lv, \textit{Relationship Between Media and Government: Taking Example of SARS Incident} [以 SARS 疫情为例看传媒与政府的关系] \textit{14 21ST CENTURY} (2003).

Although the SARS virus is highly contagious, it is not lethal and preventable. However, people were unaware because traditional news sources and the government failed to distribute such information. Rumors circulated and flooded the Internet. Some rumors speculated that the flu was a large-scale biological and chemical attack. Soon people throughout the country panicked and rushed to purchase masks, medicines and all sorts of necessities. Beijing witnessed a mass exodus of migrant workers and students, creating a state of national chaos.

The Chinese authorities lacked the power to contain international media; eventually Time magazine carried a story detailing a letter from a courageous military doctor in Beijing. In the letter, the doctor exposed the Ministry of Health’s concealment of the SARS situation. The heroic actions of this whistleblower prompted an immediate international outcry. Western media described China as “not only an autocratic authority, but also an

768 Allport and Postman argued that the quantity of rumors in circulation depends on two factors: the importance of the news and the ambiguity of the evidence. GORDON W. ALLPORT & LEO J. POSTMAN, THE PSYCHOLOGY OF RUMOR 34 (1947).


outdated communist country” that attempted to hide the truth “from its people as well as the outside world.”

Fearing that a global epidemic might be spiraling beyond control, the Chinese central government responded several months after the emergence of the SARS crisis by dismissing the minister of the Health Ministry and the mayor of Beijing for concealment of information of SARS patients. On April 23, 2003, the government required officials at all levels to “report information on SARS accurately, honestly, and in a timely manner.” The traditional media ultimately covered the crisis vigorously, and the public’s panic gradually subsided.

After the SARS incident, the Chinese government accelerated establishment of the OGI system. The SARS crisis offered China’s leaders a valuable lesson that governmental information needs proactive release in a timely manner in the event of crises in the

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773 Chia-ju Lin, A Textual Analysis of the Coverage of SARS and the Image of China, 8 ASIAN SOCIAL SCIENCE 49 (March 2012).


776 For a detailed description of governmental and media cover-up of the SARS incident and analysis of how SARS-like public incidents prompted the Chinese government to improve its crisis communication, see Lidan Chen, Open Information System and Crisis Communication in China, 1 CHINESE JOURNAL OF COMMUNICATION 38, 38-54 (April 2008).

changed media environment.\textsuperscript{778} A late or delayed disclosure of information results in spreading rumors and endangerment of social stability.\textsuperscript{779}

**Summary and Conclusion**

This chapter examines the gradual and incremental legislative process of national OGI Regulations, and exposes movement toward governmental transparency in China beginning in rural areas (OVA) and slowly expanding to higher levels of government in the form of OGA and OGI. Experiences from transparent practices at local and provincial levels provided a firm foundation for shaping national legislation.

The chapter also explores the rationales for the rise of freedom of information in China. Consistent with other research findings, this study finds that China’s entry into the WTO and pressure from the United States, its largest trading partner, are major external factors encouraging China toward greater transparency. China’s competition for participation in global events is a short-term transparency-enhancing element easily ignored.

The chapter argues that internal and domestic factors are much more important than external ones for realizing freedom of information legislation. OGI reform in China did not lose momentum because of strong commitment from reform-minded top political leaders. OGI legislation is a component of China’s overall legal reform. Rule-of-law-oriented

\textsuperscript{778} Large-scale health crises or public emergencies do not necessarily lead to public panic and social disintegration if governmental authorities react with timeliness and pro-activity, disclose information and allow media to report crises fully. Such policies underscore the United States’ maintaining social stability in 2001 when terrorists attacked the World Trade Center and the Pentagon, and in 2009 when the mysterious swine flu swept through the country.

\textsuperscript{779} For in-depth analysis of how changed media and information environment in China contributes to the rise of freedom of information in China, see WEIBING XIAO, FREEDOM OF INFORMATION REFORM IN CHINA: INFORMATION FLOW ANALYSIS 27-37 (2011).
administrative reform offered statutory and constitutional support for reformers to draft OGI legislation. The adoption and/or amendment of transparency-related laws and regulations created a beneficial legal environment for the inception of OGI legislation.

This chapter also discovers another transparency-enhancing factor worthy of address: Improving government’s capacity to distribute information. By establishing official websites, online forums, and engaging in social networking, the Chinese government, at various levels, increased its technological ability to release information. By adopting systems for press conferences and the mechanism for press secretaries, governmental agencies enhanced their capacities to deal with delivery of information and communication with foreign and domestic journalists.

Last but not least, the changed social and information environment in the early 2000s, as examined by many legal scholars, stimulated the Chinese government to become more transparent and proactive when dealing with crises. Frequent occurrences of social unrest/crises and the delayed and reactive disclosure of information allowed rumors to foment in the online and offline worlds. Citizen-journalists (they can be any citizens with an Internet-accessible computer) spread facts and rumors to every corner of the world with a click of the mouse. This chain reaction created a severe threat to social stability and denigrated the party’s and the government’s legitimacy. The Chinese government had no choice and abandoned the old-fashioned reactive and secretive approach to managing information, practiced for thousands of years. After disposing the old approach, Chinese bureaucrats embraced a new proactive disclosure of information. The change of attitude among government officials laid a solid foundation for the emergence of OGI legislation.
Chinese FOI scholar, Weibing Xiao, argued that democratization is a key rationale for China’s efforts to promote greater transparency. The analysis presented in this chapter indicates that his argument is not fully valid because the Chinese FOI law is a means, which the central party and governmental authorities use to maintain the party’s legitimacy. The adoption of OGI Regulations and relevant transparency laws and regulations is not a component of China’s political liberalization. In other words, the FOI law became possible, not because of Chinese leaders’ strong beliefs in democratic values widely accepted in the Western world, but rather, freedom of information legislation became reality because Chinese reformers successfully convinced political leaders of the benefits of FOI law to economic growth, informationization development, corruption prevention, law-based administration, and crisis management. These are all goals of the party within the framework of characteristically Chinese socialism.

\[780\] \textit{Weibing Xiao, Democratisation as a Rationale for FOI Reform in China (Chapter 4), Freedom of Information Reform in China: Information Flow Analysis 38-50 (2011).}
Chapter Six: What the Law Promises: Analysis of Statutory Language of OGI

Regulations

Introduction

This chapter will provide a detailed analysis of statutory language of OGI Regulations\(^{781}\) in the light of the Academic Draft of the law\(^ {782}\) and relevant legal interpretations.\(^ {783}\) China has three forms of legally binding statutory interpretations. One is legislative interpretation issued by the National People’s Congress and its Standing Committee; another is administrative interpretation issued by the State Council, and the

\(^{781}\) OGI Regulations 2007.


third is judicial interpretation promulgated by the Supreme People’s Court. Of the three, judicial interpretation has the weakest legal significance; however, judicial interpretation is increasingly important for judges in China for rendering legal decisions. This chapter will examine statutory language of judicial and administrative interpretations relative to *OGI Regulations*.

The bases for the method for the analysis of statutory language is nine common features of global FOI laws, as identified by international FOI expert, David Banisar: types of governmental bodies covered, accessibility, identity of those allowed access, exemptions, appeals and oversight, sanctions, affirmative publication, e-FOI, and accusations of malfeasance. The chapter will identify additional common features of world FOI laws and discusses relationship with *OGI Regulations*: legal authority, legislative purpose, fees for access, and limits to response times.

The chapter will examine *OGI Regulations* and relevant interpretations regarding these categories and comparison of Chinese law with those of the U.S. and other countries. This section will explain the reasons for Chinese law reformers embracing some U.S. and global standards and rejecting others. The discussion will include the strengths and weaknesses of OGI legislation. Choosing *U.S. FOIA* for comparison is because it “has probably been the

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most influential [FOI] law" and provides “a model for an effective public records statue.”

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The Legal Authority and Standing of OGI Regulations

As discussed in Chapter Five, both the National People’s Congress (NPC) and the State Council accepted formulation of OGI legislation for their legislative agenda; however, the NPC effort failed to produce the OGI law. The State Council, China’s cabinet, finally promulgated OGI Regulations. Under the Chinese legislative system, the State Council has certain powers to formulate administrative regulations, such as OGI Regulations; noticeably such regulations are less powerful than laws framed by the NPC and its Standing Committee.788

OGI law has advantages compared to OGI Regulations, principally, creation of new and enforceable access rights and imposition of criminal sanctions for violations of

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788 According to Legislation Law 2000, the Constitution, adopted and amended by the National People’s Congress, enjoys the highest level of legal authority. An act or law, adopted and amended by the National People’s Congress or the standing committee of the National People’s Congress, represents the second level of legal authority. Regulations, divided into administrative regulations, local regulations, autonomous regulations and separate regulations, represent the third level of legal authority. This third tier of laws is from the State Council or local people’s congresses and cannot override a law. OGI Regulations are administrative regulations, adopted by the State Council. Administrative rules represent the fourth level of legal authority, and are actions of state organs, provincial governments, or governments in comparatively larger cities. Many local OGI Rules are of the fourth level. Legislation Law 2000. Art. 78, 79, 80, 81, 82.
disclosure requirements.\textsuperscript{789} China adopted numerous laws that either promote or limit access to information. In order to avoid seriously undermining OGI law with hundreds of conflicting statutes, the NPC can assign precedence to OGI law\textsuperscript{790} over other laws, thereby permitting governmental agencies to use exemptions to OGI law as the sole reason for withholding information, similar to other countries.\textsuperscript{791} In addition, most countries with FOI legislation such as the United States and Sweden, enacted FOI laws, not FOI Regulations.\textsuperscript{792}

The reasons China ultimately adopted \textit{OGI Regulations} instead of OGI law are threefold. First, the State Council has the authority to formulate administrative regulations as long as the regulations do not impinge on the people’s congress, the court, and the procuratorate. Second, legislating regulations requires less time and effort than enacting laws. Third, the lawmaking process of \textit{OGI Regulations} is consistent with standard legislative practices in China: The State Council formulates a regulation and the NPC enacts


\textsuperscript{790} The State Council cannot allow \textit{OGI Regulations} to have precedence over laws because administrative regulations have lower legal standing than laws.


\textsuperscript{792} Hanhua Zhou, \textit{Basic Considerations in Drafting of Regulations on the Openness of Government Information (Academic Draft)} [起草《政府信息公开条例》(专家建议稿)的基本考虑] 6 \textsc{Chinese Journal of Law} 57 (2002).
a corresponding law when the NPC considers timing to be opportune, after gaining sufficient lessons and practical experience from implemented regulation.\footnote{Hanhua Zhou, Basic Considerations in Drafting of Regulations on the Openness of Government Information (Academic Draft) [起草《政府信息公开条例》(专家建议稿)的基本考虑] 6 Chinese Journal of Law 57 (2002).}

Chinese OGI reformers’ legislative considerations do make sense in the Chinese context; however, ignoring the drawbacks of OGI Regulations resulting from its low legal authority is unwise. Currently China has enacted many official information-related laws, such as Law on Guarding State Secrets, Archives Law, Criminal Law, Statistics Law, and Emergency Response Law. Many clauses in those laws are incompatible with requirements for establishing an open government. Due to weak legal standing, OGI Regulations do not supersede all those relevant laws when conflicts arise.\footnote{One of the major principles of freedom of information legislation advocated by Article 19 states that the law for freedom of information should take precedence, and “laws inconsistent with the principle of maximum disclosure require amendment or repeal.” Article 19, The Public’s Right to Know: Principles on Freedom of Information Legislation 10 (London, June 1999), available at <http://www.article19.org/data/files/pdfs/standards/righttoknow.pdf> (last visited November 18, 2012).} Consequently, the daunting task of amending relevant laws needs to occur first to assure that Regulations operate correctly.

**Legislative Purpose and Principle of OGI Regulations**

In stating the legislative purpose and principle, Academic Draft and OGI Regulations provide, respectively:

These Regulations are formulated according to the Constitution in order to ensure the protection of the public’s exercise of the right to know and of public participation in the management of state and social affairs, promotion of the flow of government information, and supervision of government agencies in the exercise of their powers in accordance with the
Disclosure of government information is the principle, while exemption is the exception (emphasis added).  

These Regulations are formulated in order to ensure that citizens, legal persons and other organizations legally obtain government information, to enhance the transparency of the government work to facilitate the exercise of administrative functions in accordance with the law and to give full play to government information in serving the people in production, daily living and social economic activities.

The differences between Academic Draft and OGI Regulations are significant. Some Chinese local OGI Rules adopted the principle of presumptive disclosure. The progressiveness of local OGI experimenters inspired Chinese scholars, and OGI academics believed that governmental agencies would have too much discretion to deny disclosure if the law did not include provisions for presumption of disclosure and the right to know. Thus, the Academic Draft clearly adopts the widely accepted principle of maximum disclosure and explicitly confers requesters a statutory right of access to governmental

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information. Contrarily, *OGI Regulations* omit the maximum disclosure principle and at best only imply a right of access. This significant omission indicates the State Council’s reluctance to embrace, explicitly, the right to know.

OGI Regulations’ ambiguity in mandating the right to know creates problems for future implementation of the law. As legal scholar, Jamie P. Horsley, said, “The overall impression is that the *OGI Regulations* favor non-disclosure as the default.” Given that the *Constitution 1982* also fails to mention explicitly the right to know, the enforcement of this controversial civil right becomes problematic in China.

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expression and freedom of information, worldwide. The organization’s name originates from Article 19 of the Universal Declaration of Human Rights.

800 In the process of revising local OGI Rules and the *Academic Draft*, the State Council decided to be less progressive than that represented by Chinese OGI scholars, local OGI experimenters and international standards. In a sharp contrast, decades of U.S. House and Senate legislative reports and U.S. Supreme Court decisions early establish a presumption of disclosure, despite the FOIA’s statutory language not explicitly stating that disclosure is the overriding principle and non-disclosure is an exception. H.R. REP. No. 110-45, at 2 (2007); Department of Air Force v. Rose, 425 U.S. 352, 361 (1976).


The failure of *OGI Regulations* to embrace the principle of maximum disclosure creates implementation obstacles as well. Although Premier Wen,\(^{804}\) other senior governmental officials,\(^{805}\) and the media\(^ {806}\) frequently stress the implied maximum disclosure principle in *OGI Regulations*, all announcements and media fanfare carry no legal weight and cannot override the absence of presumptive disclosure in the law. The result is that, whenever a conflict between disclosure and nondisclosure arises in OGI cases, governmental officials and courts have the latitude, even encouragement to err toward secrecy.

**Types of Bodies Covered by *OGI Regulations***

Under *OGI Regulations*, three types of assemblies are subject to mandatory information disclosure. The first is administrative agency (*xingzheng jiguan* 行政机关),

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\(^{804}\) Jiabao Wen, *Seriously Adhere to the Spirits of the 17th National Congress of the CPC to Promote Vigorously the Work of Incorruptibility Construction and Anti-Corruption* [认真贯彻党的十七大精神大力推进廉政建设和反腐败工作], *Qiushi* 6 (2008); Jiabao Wen, *Let Power Be Exercised in the Sunshine* [让权力在阳光下运行], *Qiushi* 8 (2012).

\(^{805}\) For example, during an *OGI Regulations* press conference in 2007, Qiong Zhang, the deputy director of the State Council Legislative Affairs Office, said, “Disclosure is the principle and nondisclosure is the exception,” rendering *OGI Regulations* as implications not guarantees. *State Council Legislative Affairs Office Deputy Director Meets the Press* [国务院法制办副主任就《政府信息公开条例》答记者], *XINHUA NEWS AGENCY*, April 24, 2007, [http://news.xinhuanet.com/politics/2007-04/24/content_6020855.htm](http://news.xinhuanet.com/politics/2007-04/24/content_6020855.htm) (last visited November 18, 2012).

which has no definition in law.\textsuperscript{807} In order to avoid confusion, some basic understanding of the Chinese government, the largest bureaucracy in the world, is necessary. China has six practical (de facto) levels of central and local government: central, province, prefecture, county, township, and village.\textsuperscript{808} Broadly speaking, each level of government has six branches: the people’s congress, the party, the people’s government, the political consultative conference, the people’s court, and the people’s procuratorate.\textsuperscript{809} \textit{OGI Regulations} apply only to one of these six branches: the people’s government.\textsuperscript{810} Given the

\textsuperscript{807} In an email interview with the author of this dissertation, Yanbin Lv, a Chinese Academy of Social Sciences legal scholar, stressed that \textit{OGI Regulations} do not define “administrative agency” because 1) \textit{Regulations} were promulgated by the State Council, automatically indicating that the law only applies to the executive branch of the government; 2) when defining “governmental information,” the State Council is equating “government” with “administrative agency.” Also, village committees are not subject to \textit{OGI Regulations} because they are not a form of government but grass-roots self-governing mass organizations. According to \textit{Organic Law of the Village Committees 1998} (村民委员会法), such organizations also have obligations to disclose information (financial information in particular) to villagers on a regular basis.

\textsuperscript{808} Practically speaking, village is the lowest level of government. But officially, township is the lowest level of government. Villages are within townships, townships are within counties, counties are within cities, cities are within prefectures, and provinces include all five. Click names of provinces, autonomous regions and municipalities for details: <http://news.xinhuanet.com/english/2003-02/19/content_815536.htm> (last visited November 18, 2012).

\textsuperscript{809} The six branches may not all exist at village and township levels. According to \textit{Constitution 1982}, the people’s congress at various levels is the highest state organ at various levels of government. In practice, the Chinese Communist Party is more powerful than any of the other five.

\textsuperscript{810} The people’s government runs from the central level to the township level. The State Council is the people’s government at the central level. \textit{OGI Regulations} apply to central level government and its administrative agencies, such as the State Council (http://www.gov.cn/), the Ministry of Public Security (http://www.mps.gov.cn/n16/index.html), the Ministry of Finance (http://www.mof.gov.cn), the Ministry of Education (http://www.moe.gov.cn/) and the Ministry of Foreign Affairs
complexity and size of the Chinese bureaucracy, obtaining an accurate number of administrative agencies under all levels of the people’s government is daunting.\footnote{Under the State Council (http://english.peopledaily.com.cn/data/organs/statecouncil.shtml), 28 ministries and commissions are subject to disclosure requirements of OGI Regulations. China has, officially, 34 provincial-level people’s governments, over 300 prefecture-level people’s governments, nearly 3,000 county-level people’s governments, and over 40,000 township-level people’s governments. OGI Regulations cover all of these governmental bodies. For a detailed analysis of China’s modern political system, see Michael F. Martin, Understanding China’s Political System, Congressional Research Service, Washington, D.C., April 14, 2010, <http://www.fas.org/sgp/crs/row/R41007.pdf> (last visited November 18, 2012).}

Such administrative agencies are numerous.

The second type of assembly covered by OGI Regulations is an organization authorized by laws or regulations to manage public affairs.\footnote{OGI Regulations 2007. Art. 36.} OGI Regulations do not define such organizations, but according to Administrative Permission Law 2003 and Civil Servants Law 2005, such organizations are quasi-administrative. They are not administrative in themselves but governmental sponsorship permits their fulfilling obligations for public affairs management. Examples of such organizations are China Securities Regulatory

(\url{http://www.mfa.gov.cn/chn/gxh/tyb/}). Click the site \url{http://english.gov.cn/links.htm} to see the organizational structure of the State Council. Provincial-level governments and their administrative agencies, subject to OGI Regulations, are many, for example, Sichuan Provincial People’s Government (\url{http://www.sc.gov.cn/}), Sichuan Department of Public Security (\url{http://www.scga.gov.cn/}), and Jiangsu Provincial People’s Government (\url{http://www.jiangsu.gov.cn/}). County-level governmental agencies covered by OGI Regulations are numerous, for example, Nanjiang County People’s (\url{http://www.scnj.gov.cn/}) and Pingchang County People’s Government (\url{http://www.scpc.gov.cn/}). Examples of township-level agencies OGI Regulations are Taibai Township People’s Government in Anhui Province (\url{http://www.taibai.gov.cn/zf/index.php}) and Dalingshan Township People’s Government in Guangdong Province (\url{http://www.dalingshan.gov.cn/}) (last visited November 18, 2012).
Commission, China Insurance Regulatory Commission, China Certification and Accreditation Administration.813

The third type of assembly subject to disclosure requirements of OGI Regulations are public enterprises and institutions engaging in sectors “closely related to the interests of the people,” such as education, medical treatment and health care, family planning, water supply, electricity supply, gas supply, heating supply, environmental protection and public transportation.814 Largely due to this provision, all colleges and universities,815 hospitals and clinical institutions,816 public utilities companies,817 environmental protection-related public institutions,818 and public transportation companies819 in China are subject to OGI

813 Similar organizations in the United States include Fannie Mae and Freddie Mac and other independent regulatory agencies such as the Federal Communications Commission, the Federal Trade Commission, and the United States Securities and Exchange Commission.


816 Hospitals, clinical institutions and health care centers shall follow the Information Disclosure Rules of Health Institutions (Exposure Draft) 2009 formulated by the Ministry of Health in accordance with OGI Regulations. Information Disclosure Rules of Health Institutions (Exposure Draft) 2009 [医疗卫生机构信息公开实施办法（征求意见稿）] the General Office of the Ministry of Health, publication date: August 24, 2009.


818 Public sectors’ undertakings for environmental protection shall follow the Interim Rules of Information Disclosure Implementation for Public Institutions on Environmental Protection
Regulations. Given the large number of enterprises and institutions, reasonably, the number of organizations complying with OGI Regulations exceeds many national FOI laws.

Countries with freedom of information laws represent four categories in terms of types of bodies regulated:820 The first category includes countries in which only the executive branch of the government is subject to information disclosure;821 the second category are those in which all executive, judicial and legislative organs are subject to disclosure requirements;822 the third category countries are those in which all three branches of government and quasi-government organizations are subject to the law;823 the fourth category are those countries in which all three branches of government, quasi-

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821 USA and Japan fall into this category. US. FOI laws at the federal and state levels apply to only the executive branch of the Government. 5 U.S.C. § 552(f)(1)(2006). The FOI statutes do not apply to records held by congresses, the courts, private individuals or private companies, including private entities under federal contracts. U.S. Department of Justice, Freedom of Information Act Guide & Privacy Act Overview 31-36 (May 2004). However, it is important to note that U.S. constitutional law and common law precedents mandate transparency obligations of U.S. judicial and legislative organs.

822 The European Union falls into this category.

823 New Zealand falls into this category.
government organizations and private entities must comply with disclosure requirements.\textsuperscript{824}

Globally, most countries fall into the first category.\textsuperscript{825} Countries as progressive as South Africa toward freedom of information are few. China does not fall into any of the four categories, since a comparison indicates China's law seems more disclosure-friendly than its counterparts in the first category in terms of variety of bodies covered. China's approach to subject quasi-government organizations, public enterprises, and educational and medical institutions to disclosure requirements renders its policy more aggressive. However, China's inability to encompass the other five branches of the government, especially the party, into compliance is significantly negative.

As the only ruling party of the country, the Chinese Communist Party\textsuperscript{826} is the leading decision-maker on virtually all the major issues, and the party formulates the most important policies concerning various aspects of Chinese society. Understandably, the party generates, stores and obtains a wealth of documents and records of vital importance.

\textsuperscript{824} South Africa falls into this category. In South Africa, the \textit{Promotion of Access to Information Act} allows individuals to demand information from both public and private entities. A few countries have adopted this approach. Richard Calland, \textit{Prizing Open the Profit-Making World, in The Right to Know: Transparency for an Open World} 214-42 (Ann Florini & Joseph E. Stiglitz eds., 2007).


\textsuperscript{826} Almost in parallel with the people's government, the party is a huge bureaucratic hierarchy with party committees ranging from the central level to the village level. Party secretaries, appointed by higher-level party committees, head the lower-level committees. Party secretaries at various levels are normally more powerful and influential than their counterparts in the corresponding people's government.
to the Chinese public. Although the party is not a governing body recognized by the Constitution 1982, control of “all state apparatuses and of the legislative process” secures the party’s position as the “supreme political authority and power” in China. Given the influence and prestige of the ruling party, disappointingly, OGI Regulations and other transparency-promoting laws are not applicable to records and documents held by numerous powerful party organizations.

What Is Accessible under OGI Regulations

Internationally, two approaches describe the materials accessible under the FOI law. One is the use of the term “information” while the other uses terms such as “records,” “files,” and “documents.” Most FOI laws, especially newer ones, prefer the former for its

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827 Interestingly, the Constitution 1982 rarely mentions the Chinese Communist Party. The Preamble to the Constitution states that “under the leadership of the Communist Party of China and the guidance of Marxism-Leninism and Zedong Mao Thought, the Chinese people of all nationalities will continue to adhere to the people’s democratic dictatorship and follow the socialist road...” However, the Constitution does not state the method for implementing this leadership role in the country’s political structure, nor does it specifically define the relationship of the party to the legislative, executive, and judicial branches of the government.


830 OGI Regulations are unable to subject the party to its disclosure requirements due to the regulation’s low legal status and authority. As an administrative regulation, it can only compel administrative agencies under the people’s government to comply with the transparency requirements. The party, the courts, and the people’s congress are beyond the scope of administrative regulations. If the Chinese OGI reformers desire, the future OGI law may apply to all governing bodies including the party.

831 The following laws use the term “information”: the U.S. FOIA and many state FOI laws (USA); the Freedom of Information Act (Australia); the Access to Information Act (Canada); The Right to Information Act (India); the Freedom of Information Law (Israel); the
expansiveness. In keeping with international standards, OGI Regulations use "information" to describe accessible materials and defines government information as "information prepared or obtained by an administrative organ in the process of exercising its duties and recorded and preserved in a certain form."

The statutory language "recorded and preserved in a certain form" is sufficiently expansive to include all medium of all types, electronic or non-electronic. This approach aligns with international practice; however, problems arise because governmental officials try to orally transmit information (such as in a meeting) to avoid the obligation for disclosure. This is a challenge facing many FOI countries.

OGI Regulations do not stipulate if individuals’ access to information requires governmental agencies to produce, collect, summarize, and analyze the material. In narrowing the scope of information accessible under Regulations, the State Council and the Supreme Court clarified that the information sought shall be in existence already and acquiring the information requested would not entail extra effort. The State Council

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Promotion of Access to Information Act (South Africa); The Act on Disclosure of Information by Public Agencies (South Korea).


further limits the scope of accessible information by stating, in one of its legally binding documents, that procedural information used for research and internal management are off-limits to requesters.\footnote{Opinions of the State Council General Office on Doing a Good Job of Disclosing Government Information on Request \cite{FaShi2011} \textit{Fa Shi} \citeyear{FaShi2011} No. 17, effective date: August 13, 2011.}

The State Council clarifies whether or not official information transferred to archives or archival administrations is accessible by specifying that \textit{OGI Regulations} do not apply.\footnote{Opinions of the General Office of the State Council on Several Issues Concerning the Enforcement of Regulations of the People's Republic of China on the Disclosure of Government Information \cite{GuoBanFa2008} \textit{Guo Ban Fa} \citeyear{GuoBanFa2008} No. 36, effective date: April 29, 2008.} The Supreme Court supports the exception by holding that \textit{OGI Regulations} apply if governmental information represents content in a defendant's archives, and \textit{OGI Regulations} do not apply if national archives at all levels have received official material.\footnote{Article 7, Provisions of the Supreme People's Court on Issues Concerning Trying Administrative Cases of Government Information Disclosure \cite{FaShi2011} \textit{Fa Shi} \citeyear{FaShi2011} No. 17, effective date: August 13, 2011.}

According to \textit{Archives Law 1988}, government documents transfer to archival institutions after a certain period. Once documents become archives, their designation is “sealed” and disclosure to the public may not occur for an extended time. The administrative and judicial interpretations concerning archived information may prompt agencies to expedite, unduly, the process of archiving sensitive information.

\textbf{Affirmative Publication of Governmental Information}

\textit{on Issues concerning Trying Administrative Cases of Government Information Disclosure} \cite{FaShi2011} \textit{Fa Shi} \citeyear{FaShi2011} No. 17, effective date: August 13, 2011.
Similar to FOI laws in other countries, OGI Regulations mandate a duty for agencies to release, actively and proactively, certain categories of information. What differentiates China’s OGI Regulations from other FOI laws is that the former “include broader requirements for proactive disclosure than FOI laws elsewhere.”

*OGI Regulations* contain a general clause, with four criteria, any one of which is sufficient to satisfying the mandate:

1. Information involving the vital interests of citizens, legal persons, or other organizations;
2. Information that needs wide dissemination or involves a situation that requires participation of the public;
3. Information pertaining to establishment, functions, working procedures, and the like concerning an official agency, or
4. Other information that should have proactive publication in accordance with laws, regulations and relevant rules.

This general clause “sets broad standards” for governmental agencies to justify proactive disclosure of governmental information. In addition to the inclusion of basic criteria for proactive disclosure, *OGI Regulations* establish “minimum standards” by listing in three types of important information requiring proactive disclosure for governments at different levels. Article 10 enumerates 11 categories of key information that

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governmental agencies at or above the county level shall affirmatively disclose.\(^{842}\) Article 11 lists four categories stressing additional information that governmental agencies at the county level shall disclose.\(^{843}\) Article 12 enumerates eight types of key information agencies at the village and township level shall publicize.\(^{844}\) Once, publicizing officials’ salaries and other personal assets was a proposal from some experts as key information; however, the Academic Draft and official version of the law did not include this proposal.\(^{845}\)

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\(^{842}\) *OGI Regulations 2007.* Art.10. Article 10 emphasizes the publicizing of administrative regulations, rules, and regulatory documents; national economic and social development plans; statistical information, budgets and expenses; centralized procurement projects, administrative licensing, major construction projects, public health, environmental protection, and food, drug safety and product quality.

\(^{843}\) *OGI Regulations 2007.* Art.11. Article 11 mandates the publicizing of information on urban and rural construction, social and public welfare construction, land requisition or expropriation, house demolition and compensation, emergency rescue, disaster relief, subsidy funds, and assistance to low-income families.

\(^{844}\) *OGI Regulations 2007.* Art.12. Article 12 provides the publicizing of key governmental information concerning implementation of national rural policies, use of state funds, land use plans, land requisition or expropriation, house demolition and compensation, emergency rescue and disaster relief, assistance to low-income families, township or village enterprises, and family planning.

\(^{845}\) A Sina.com survey shows that 77.5 percent Chinese citizens anticipate disclosure of public officials’ personal assets and salaries in accordance with *OGI Regulations,* but this requirement does not appear in either the Academic Draft or final version of the law. Yuchuan Mo was one Chinese reformer who drafted *OGI Regulations.* He is a law professor at the prestigious Renmin University of China. Mo explained that, in drafting *OGI Regulations,* legal academics and experts once considered writing disclosure of public officials’ personal assets and salaries into the law. They changed their position because of pressure from the party and governmental officials. Xuyang Sun, *Stalled First OGI Lawsuit in Chenzhou* [政府信息公开第一案僵持郴州], *Beijing News,* May 13, 2008, <http://epaper.bjnews.com.cn/html/2008-05/13/content_203748.htm> (last visited November 18, 2012).
In order to ensure compliance with proactive disclosure requirements, *OGI Regulations* devised legal methods and procedures.\textsuperscript{846} First, *Regulations* compel governmental agencies to disseminate information via various communication channels such as official gazettes and websites, press conferences, and other mass media.\textsuperscript{847} Second, the Chinese government requires agencies to provide all proactively disclosed information to national archives, public libraries, and created facilities such as public reading rooms and electronic monitors.\textsuperscript{848}

Third, *OGI Regulations* require agencies to compile, publish, and update OGI guides and inventories to facilitate easy access to proactively disclosed information.\textsuperscript{849} Fourth, an established consultation and coordination mechanism among agencies ensures that

\textsuperscript{846}\textsuperscript{846} \textsc{Weibing Xiao}, \textit{Freedom of Information Reform in China: Information Flow Analysis} \textsc{84-85} (2011).

\textsuperscript{847}\textsuperscript{847} *OGI Regulations 2007*. Art.15. Article 15 mandates agencies proactively disclose governmental information through official gazettes, governmental websites, press conferences, newspapers and periodicals, radio or television broadcasting or any other means easily accessible to the public.

\textsuperscript{848}\textsuperscript{848} *OGI Regulations 2007*. Art.16. Article 16 requires agencies to provide proactively disclosed information to national archives and public libraries in a timely manner and establish facilities in those locations to allow easy access to the information. Article 16 also compels agencies to establish public reading rooms, material distribution venues, information bulletin boards, and electronic monitors to facilitate dissemination of official information.

\textsuperscript{849}\textsuperscript{849} *OGI Regulations 2007*. Art.19. Article 19 requires agencies to formulate and publish OGI guidelines and OGI indexes. The OGI guidelines include classification and arrangement systems, methods for obtaining official information, contact information for governmental agencies responsible for the OGI activities. The OGI inventory includes an index of information, title, summary and date of generation.
involved administrative organs disclose information in an accurate and consistent manner.\textsuperscript{850}

Fifth, \textit{OGI Regulations} establish a time limit for affirmatively disseminating official information; this aspect is absent from \textit{U.S. FOIA} and many other countries’ FOI legislation. \textit{Regulations} require proactively publication of disclosed information within 20 working days after its formulation or modification.\textsuperscript{851} Sixth, Chinese citizens may file complaints to the next higher-level agency or supervisory agency when a certain agency fails to perform its obligation of proactively publicizing information.\textsuperscript{852} Last, imposition of administrative sanctions occurs for agencies and relevant officials who fail to perform the obligation of disclosing information or updating OGI guides and inventories on a timely basis.\textsuperscript{853}

In a sharp contrast with the \textit{Academic Draft} and many other countries’ FOI laws such as \textit{U.S. FOIA},\textsuperscript{854} \textit{OGI Regulations} offer a very comprehensive and detailed list of information for proactive dissemination.\textsuperscript{855} Various legal measures ensure compliance by official agencies mandated to disclose proactively. The emphasis on official, proactive disclosure is rational in the Chinese context. First, in the Chinese political culture, which

\begin{itemize}
\item \textsuperscript{850} \textit{OGI Regulations} 2007. Art. 7.
\item \textsuperscript{851} \textit{OGI Regulations} 2007. Art.18.
\item \textsuperscript{852} \textit{OGI Regulations} 2007. Art.33.
\item \textsuperscript{853} \textit{OGI Regulations} 2007. Art.35.
\item \textsuperscript{855} The \textit{Academic Draft} lists seven categories of information for proactive disclosure by governmental agencies at all levels. \textsc{Academic Draft of OGI Regulations: Draft, Explanation, Rationale and Legislative Examples} [政府信息公开条例专家建议稿-草案、说明、理由、立法例] 3 (Hanhua Zhou ed., Chinese Legal Publishing House, 2003).
\end{itemize}
has, for years through Confucianism, cultivated common people’s respect for governmental agencies and officials, reactive disclosure of information may imply an antagonistic challenge to governmental authority.

Second, the approach to details and comprehensiveness of proactive disclosure enables agencies and officials in China to adapt to OGI compliance more easily. Attention to OGI is new for many agencies and officials. A detailed list of information requiring proactive disclosure serves as a practical guide for OGI officials in initial compliance and enables identification of material to disclose. Third, establishment of official websites and the system of spokespersons has enhanced the capacity of official agencies in China to disseminate, proactively, information. Fourth, proactive disclosure of information is beneficial to governmental agencies: “It can reduce the administrative burden of answering routine requests.” In a legally binding document used to interpret OGI Regulations, the State Council clearly reiterates official agencies’ responsibility to improve proactive disclosure of information to allow reduction of administrative costs, and improve administrative efficiency.

Who Can Ask for Disclosure of Governmental Information

In addition to the obligation of proactively publicizing governmental information, governmental agencies in China have a mandate to release information upon request. OGI

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Regulations provide that “citizens, legal persons or other organizations” may file OGI applications with relevant governmental agencies.\footnote{OGI Regulations 2007, Art.13.} If information applicants have difficulties reading, hearing, or seeing, administrative agencies must provide necessary assistance.\footnote{OGI Regulations 2007, Art.28.} Regulations also grant individuals the right to correct personal information held by any administrative agency.\footnote{OGI Regulations 2007, Art.25. Article 25 requires governmental agencies to correct personal information if individuals have evidence showing that certain personal information is not accurate and file an application for correction.} Most importantly, Regulations provide a special needs test, stipulating that the information requested be relevant to requesters’ special needs including “production, livelihood and scientific research.”\footnote{Opinions of the General Office of the State Council on Several Issues Concerning the Enforcement of the Regulations of the People’s Republic of China on Open Government Information [国务院办公厅关于施行《中华人民共和国政府信息公开条例》若干问题的意见] General Office of the State Council, Guo Ban Fa [2008] No. 36, effective: April 29, 2008.}

The State Council and the Supreme Court clarified the special needs test respectively:

Where an applicant applies for the disclosure of governmental information \textit{irrelevant to his/her special needs}, including production, livelihood and scientific research needs, the administrative organ concerned \textit{is not required} to provide such information (emphasis added).\footnote{Opinions of the General Office of the State Council on Several Issues Concerning the Enforcement of the Regulations of the People’s Republic of China on Open Government Information [国务院办公厅关于施行《中华人民共和国政府信息公开条例》若干问题的意见] General Office of the State Council, Guo Ban Fa [2008] No. 36, effective: April 29, 2008.}

Under any of the following circumstances, where a defendant has performed the obligation of legal notification or explaining the reason, the people’s court shall dismiss the plaintiff’s claims:...The plaintiff fails to reasonably explain that the application for acquiring government information is based on \textit{its special production, life and scientific research demands}, and the defendant
refuses to provide the information for this reason (emphasis added).

Where the defendant refuses to provide government information on the grounds that the information is irrelevant to the applicant’s special demands for production, life and scientific research, the people's court may require the plaintiff to make explanation on the special demands.

**OGI Regulations** align with international standards for mandating the legal obligation of administrative organs for both proactive and reactive disclosure of governmental information. The requirement that assist illiterate and handicapped applicants is also encouraging, given the large number of Chinese with those disabilities. However, regarding applicants’ eligibility for information and the special needs test, *Regulations* retreat significantly from the *Academic Draft* and indicate the Chinese government’s unwillingness to accept standards widely embraced by most FOI countries including the United States.

The *Academic Draft* entitles all natural persons (thus covering foreign citizens), legal persons, and other organizations to non-exempt, official information. The *Draft* does not provide a special needs test. Both moves indicate adoption of international best practices allowing anyone to exercise the access right, whether or not they have any grounds or legal

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interest. \textsuperscript{866} \textit{U.S. FOIA} \textsuperscript{867} and most FOI laws in the world accept the liberal standard. Some countries, such as Finland specifically allow for “anonymous requests” to ensure that no discrimination against requestors occurs. \textsuperscript{868} China’s failure to allow \textit{any person} to apply for information for \textit{any purpose} indicates the government’s present, limited tolerance for reactive disclosure of information, and constrains individuals, such as foreigners \textsuperscript{869} and citizens without special needs, \textsuperscript{870} from obtaining information from the Chinese


\textsuperscript{869} Qiong Zhang, the deputy director of the State Council Legislative Affairs Office, assisted formulation of \textit{OGI Regulations}. Zhang stated during a press conference in 2007 that foreign citizens and foreign organizations should apply for governmental information in accordance with the principle of reciprocity in international laws. He did not elaborate on this point and the practical effect of his statement remains uncertain. \textit{State Council Legislative Affairs Office Deputy Director Meets the Press} [国务院法制办副主任就《政府信息公开条例》答记者], Xinhua News Agency, April 24, 2007, <http://news.xinhuanet.com/politics/2007-04/24/content_6020855.htm> (last visited November 18, 2012).

\textsuperscript{870} Some information requesters may find difficulty justifying special needs, although the special needs test is rather expansive. In addition, governmental agencies and courts may
Government.

**Governmental Response Time Limits and Application Fees for Access**

Similar to *U.S. FOIA*\(^ {871}\) and other FOI laws in the world, the Chinese freedom of information law requires agencies' timely response to information requests.

Under *OGI Regulations*, governmental agencies must immediately reply after receiving an application for disclosure of certain information if possible.\(^ {872}\) If an immediate reply is not possible, administrative organs must reply within 15 working days after receiving the application.\(^ {873}\) The maximum extension, if needed, is not to exceed 15 working days; notification of the extension is necessary.\(^ {874}\)

Similar to *U.S. FOIA*\(^ {875}\) and many other FOI laws, *OGI Regulations* authorize governmental agencies to levy a fee to reduce administrative burdens and prevent repeated applications, while simultaneously imposing fees' limits.

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\(^{871}\) The maximum governmental response time limits according to *U.S. FOIA* are 30 working days. First, U.S federal governmental agencies must notify information requesters of their decisions within 20 days after accepting the *FOIA* requests. 5 U.S.C. § 552((a)(6)(A)(i)(2006). Second, additional 10 working days shall apply if the situation warrants. 5 U.S.C. § 552((a)(6)(B)(i)(2006).

\(^{872}\) *OGI Regulations 2007*. Art. 24.


According to *OGI Regulations*, when providing information upon request, administrative agencies may not charge any other fees except the fees to cover the cost of searching, photocopying, and mailing the requested information. Administrative agencies may not receive remuneration from selling information to third parties or other organizations.

The Chinese FOI law differs sharply from the *Academic Draft, U.S. FOIA* and many other FOI laws for standards on fees’ reductions or exemptions. Although the Chinese law does not define income criteria for fee reduction or exemption, a financial hardship test applies, indicating an applicant with financial difficulties could apply for a reduction or exemption. In addition to the financial hardship test, the *Academic Draft* adopts a public interest test, meaning that fees reduced or waived are appropriate if disclosure of information is “in the public interest.”

Chinese scholars, who formulated the *Academic Draft*, clearly gained inspiration from the public interest test used by many other FOI laws including *U.S. FOIA*. Under *U.S. FOIA*, reduction or exemption from application fees may occur if agencies believe disclosure is “in the public interest.” In other words, satisfaction of the public interest test occurs when dissemination “is likely to contribute significantly to public understanding of

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876 *OGI Regulations 2007*. Art. 27.

877 *OGI Regulations 2007*. Art. 27.

878 *OGI Regulations 2007*. Art. 28.

the operations of the government.”

By using the public interest test, many professional and freelance journalists in the United States gain information at no cost or lowered cost.

The economic hardship test used by OGI Regulations is sensible in the Chinese context because China remains poor in terms of per capita income of citizens. The use of this test encourages people of low socio-economic status to request information. Unlike wealthy residents who have widespread social and personal connections for obtaining information, poor people in China face an informational divide and OGI Regulations may be the only tool available for seeking information from the government.

Further, exploring the reasons for, and consequences of a lack of a public interest test in the Chinese law with regard to fees is worthwhile. China’s refusal to accept the public interest test might have explanation from: First, China seeks reduction of financial burdens on agencies. Second, law crafters may have had difficulty defining the public interest. Third, journalists’ requests for information could easily pass the public interest test due to the nature of mass media and journalism. Establishing the public interest test would encourage news organizations and journalists to apply for information because they

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881 In the United States, “independent journalists” are allowed to apply for FOIA fee waiver although they “lack an institutional affiliation with a recognized news media entity.” S. REP. No. 110-59, at 6 (2007).

882 According to the International Monetary Fund data, China’s GDP (PPP) per capita in 2011 was $8,382 and ranked 92 among 183 countries and regions in the world. According to the World Bank data, China’s GDP (PPP) per capita in 2010 was $7,599 and ranked at 96 among 181 countries and regions in the world. China’s corresponding GDP (nominal) per capita and rankings were even lower than its PPP equivalents.

883 News media, electronic or non-electronic, enable wide distribution of information, thus contributing to public understanding of governmental activities.
would knowingly receive preferential treatment for fees. However, China shuns special considering treatment for journalists regarding fees. In short, at this stage, the government’s disinclination is to encourage journalists’ non-prominent roles when using OGI Regulations due to political sensitivity toward freedom of the press.884

**Governmental Information Exempted from Disclosure**

Exemptions are probably among the most important and most controversial clauses of FOI laws. The Academic Draft of the OGI Regulations 2002 lists seven categories of information exempted from disclosure: state secrets, information specifically exempted from disclosure in other statutes, internal personnel rules and affairs, commercial secrets, personal privacy, procedural information used for decision-making, and criminal law enforcement.885 The Draft conforms generally to international practices886 represented by U.S. FOIA.887

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886 DAVID BANISAR, FREEDOM OF INFORMATION AROUND THE WORLD 2006: A GLOBAL SURVEY OF ACCESS TO GOVERNMENT INFORMATION LAWS 22 (report for Privacy International, London, July
However, officials in the State Council declined to accept exemptions formulated by legal scholars. Instead, they configured another version of exemptions, ostensibly more limited than many similar FOI laws in the world. In establishing a basic principle for guiding agencies to disclose information, Article 8 of OGI Regulations provide that governmental agencies may not disclose information that may endanger “state security (guojia anquan 国家安全), public security (gonggong anquan 公共安全), economic security (jingji anquan 经济安全), and social stability (shehui wending 社会稳定).”

Article 23 of Regulations further stipulates nondisclosure of information involving commercial secrets (shangye mimi 商业秘密) or personal privacy (geren yinsi 个人隐私) if agencies believe that such action would harm legitimate rights and interests of a third party. In order to ensure compliance with exemption requirements, Article 14 requires agencies to establish a “confidentiality review” mechanism. Any information that governmental agencies planning to disclose, proactively or reactively, require review by


887 The U.S. FOIA has nine categories of exemptions. The exemptions cover information in the categories: national security, agency personnel rules and practices, information specifically exempted from disclosure by other statutes, trade, commercial or financial secrets inter-agency or intra-agency memorandums or letters; personnel and medical files and similar files involving personal privacy, law enforcement information, information concerning financial institutions, and geological and geophysical information. 5 U.S.C. § 552((b) (1-9)(2006).


the mechanism to ensure disclosure does not involve state secrets, commercial secrets, and personal privacy.\footnote{891}

Problems with Chinese OGI exemptions are evident. First, most exemptions from OGI and other relevant laws\footnote{892} do not have clear, narrow, definitions as requested by international best practices “to avoid including material which does not harm the legitimate interest.”\footnote{893} Although state secrets, defined in Article 9 of Law on Guarding State Secrets 1988\footnote{894} and amended in 2010 and narrows the scope of state secrets,\footnote{895} the definition still remains too vague and broad. Although state and working secrets appear in Public Servants Law 2005, no definition exists at all.\footnote{896} While Article 10 of Anti-trust Law


\footnote{892} Archives Law 1988 is a good example. This law, formulated to strengthen the management of historical records in various forms, keeps archives from the public as a rule, and disclosure archives is an exception, which conflicts with OGI Regulations. Once governmental information transfers to the archives, the chances of release to the public is low except when the declassification date expires.


\footnote{894} Law on Guarding State Secrets 1988. Art. 9. The 1988 law stipulates information concerning major state policies and decisions, armed forces, and diplomatic events, national economic and social development, science and technology, and acts safeguarding national security and criminal investigation, among other items, are state secrets. The scope of the law tends to be too broad. Under the law, a governmental agency may deem most of its official information as state secrets.


\footnote{896} Civil Servants Law 2005, created to improve China’s civil servant system, defines officials’ rights and responsibilities. Under Civil Servants Law 2005, officials have legal obligations to maintain secrets of the state and secrets relating to occupational
1993 defines commercial secrets, \(^{897}\) clarity for “whether or not this definition will be widened to include information in governmental procurements and other contracts to which the government is a party” is absent. \(^{898}\) OGI Regulations and any other relevant laws, regulations and legal interpretations do not define terms such as state security, public security, economic security, social stability \(^{899}\) and personal privacy. \(^{900}\) They are all responsibilities. The law does not define these secrets. Agencies could use Civil Servants Law 2005 to create an exemption for releasing information that OGI Regulations require disclosure.

\(^{897}\) Commercial or trade secrets refer to any technology information or businesses’ operational information which unknown to the public, can cause economic benefits to the obligee, has practical utility, and about which the obligee has adopted secret-keeping measures. Anti-trust Law 1993. Art. 10.


\(^{899}\) China is among the few countries that exempt from disclosure information that agencies believe publicizing may endanger social stability. Chinese political leaders regarded social stability as a prerequisite for reform and development since the late 1970s. They stated that “Stability is of overriding importance” and “Nothing can be achieved without stability.” Xiaoping Deng, 3 Selected Works of Xiaoping Deng 364 [邓小平文选第三卷] (2nd ed. 1994); Zemin Jiang, Hold High the Great Banner of Xiaoping Deng Theory for an All-round Advancement of the Cause of Building Socialism with Chinese Characteristics to the 21st Century [高举邓小平理论伟大旗帜，把建设有中国特色社会主义事业全面推向 二十一世纪], speech delivered at the 15th National Party Congress, Beijing, September 1997; Jintao Hu, Hold High the Great Banner of Socialism with Chinese Characteristics and Strive for New Victories in Building a Moderately Prosperous Society in All Aspects [高举中国特色社会主义伟大旗帜为夺取全面建设小康社会新胜利而奋斗], speech delivered at the 17th National Party Congress, Beijing, October 2007.

\(^{900}\) In China, the concept of individual privacy is still without legal status, and no laws exclusively apply to protection of personal information. As Jamie Horsley said, all those legal issues concerning personal privacy “are not yet addressed comprehensively in Chinese law.” Jamie P. Horsley, China Adopts First Nationwide Open Government Information Regulations, FreedomInfo.org, at 4, <http://www.law.yale.edu/documents/pdf/Intellectual_Life/Ch_China_Adopts_1st_OGI_Regulations.pdf> (last visited November 18, 2012); Lei Zheng, Enacting and Implementing Open Government Information Regulations in China: Motivations and Barriers, paper
legitimate state interests but their specific meanings are elusive. The gravity of social instability in today's China warrants an exemption for disclosing information, which may endanger social stability. However, the lack of clearly drawn definitions of those terms provides governmental agencies and courts too much discretion for denying disclosure. Basically, agencies may use those ambiguous terms to withhold most information they do not want to release. This reason is one explanation for judicial interpretation of the OGI Regulations' maintaining those terms in its draft but deleted them from the final version.


903 Mingan Jiang, the director of the Constitution and Administrative Law Research Center at Peking University, contended that statutory language in the OGI Regulations such as state security, public security, economic security and social stability may provide agencies with a laundry basket. Whenever they want to reject disclosure of any information, they may
Second, China’s OGI Regulations fail to include a “substantial harm test” as required by many FOI laws around the world. In order to justify exempting certain categories of information, agencies must show that disclosure of the information would cause substantial or significant harm to certain legitimate interests, such as national security, trade secrets, and personal privacy. A low degree of harm is insufficient to trigger sealing information. In keeping with this substantial harm test, Article 8 of OGI Regulations should have the revision:

Disclosure of government information by administrative organs shall not endanger state security, public security, economic security and social stability. Disclosure of government information by administrative organs shall not substantially or significantly endanger state security, public security, economic security and social stability (emphasis added).


OGI Regulations 2007. Art. 8 as revised by the author of this dissertation.
Third, China’s *OGI Regulations* fail to include a public interest test that applies to all exemptions.\textsuperscript{908} Many national FOI laws provide that the public interest test shall apply to all exemptions despite authorities’ and oversight bodies’ believing disclosure of information may cause substantial or significant harm to a legitimate aim. Officials and courts must balance interests for withholding information against public interest for disclosure.\textsuperscript{909} Releasing information occurs when "[t]he public benefit in disclosure of the information outweighs any harm that may be caused by doing so."\textsuperscript{910} In China, the public interest test is inapplicable to exemptions of state secrets. The test applies only to commercial secrets and privacy.\textsuperscript{911}


\textsuperscript{911} OGI Regulations 2007. Art.14. Article 14 provides that governmental agencies may still publicize governmental information involving commercial secrets and personal privacy without the consent of the third parties if agencies believe that non-disclosure may result in significant injury on the public interests. In explaining Article 14, Qiong Zhang, deputy director of the Legislative Affairs Office of the State Council that presided at the drafting of *OGI Regulations*, stated that information concerning major economic crimes, business frauds, and sex crimes fall into this category. *State Council Legislative Affairs Office Deputy Director Meets the Press* [国务院法制办副主任就《政府信息公开条例》答记者], Xinhua News Agency, April 24, 2007,
Fourth, unlike many FOI laws that provide discretionary rather than mandatory exemptions,912 the OGI Regulations provide mandatory exemptions, indicating that the Chinese government prohibits agencies from disclosing any exemption under OGI Regulations.913 Governmental agencies and officials responsible for disclosure of exempted information receive punishment.914 Fifth, unlike most FOI laws requiring that “once the reason for exemption has passed, the information should be made available,”915 OGI Regulations set exemptions for an indeterminate duration. The five problems regarding exemptions problems seriously constrain the ability and willingness of agencies and oversight bodies to disclose information. The drawbacks also severely limit the capacity of applicants to acquire information held or generated by administrative organs.916

Appeals Process and Oversight Bodies

912 For example, the nine exemptions under U.S. FOIA are discretionary, not mandatory.

913 WEIBING XIAO, FREEDOM OF INFORMATION REFORM IN CHINA: INFORMATION FLOW ANALYSIS 87 (2011).

914 OGI Regulations 2007. Art. 35. The subparagraph (5) of Article 35 provides that corrections shall be made and disciplinary penalty or criminal liability shall be imposed on governmental agencies and the officer in charge of publicizing of governmental information that should not be publicized.


916 In an email interview with Yanbin Lv, a legal scholar at the Chinese Academy of Social Sciences Institute of Law, he acknowledged to the author of this dissertation that poorly designed exemptions are a big flaw in OGI Regulations.
Under *OGI Regulations*, the General Office of the State Council and corresponding general offices of local people’s government at or above the county level or their designated departments are responsible for promoting, guiding, coordinating, and supervising OGI their respective administrative areas. The people’s government at various levels and their departments are to establish OGI offices responsible for day-to-day OGI concerns, maintaining and updating official information, formulating OGI guidelines, OGI indexes and OGI annual report, and conducting confidentiality reviews for official information. Publication of the OGI annual activity report by administrative organs at all levels must occur before March 31 each year. The report includes: information on proactive disclosure, information on reactive disclosure, information on fee collection, fee reductions and exemptions, information of administrative reviews and lawsuits, and major problems and solutions. Both *OGI Regulations* and one of the State Council interpretations, without details, oblige all levels of the peoples’ government to establish systems for OGI activities’ evaluation, a public comment and review, and accountability.

In order to ensure that an administrative organ fulfills obligations to publicize, proactively, information according to the law, the Chinese government allows citizens to

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917 *OGI Regulations 2007*. Art.3.

918 *OGI Regulations 2007*. Art.4.


920 *OGI Regulations 2007*. Art.32.

report problems to the government body at the next higher level, the supervisory body, or the general office of the people's government at the corresponding level. The agency that receives the report must investigate and resolve the issue.  

In order to ensure that administrative organs fulfill their obligations for disclosing information upon request, OGI Regulations provide that citizens, legal persons, or other organizations may apply for administrative reconsideration or file an administrative lawsuit if they believe a specific administrative action has infringed upon their lawful rights and interests. When interpreting an OGI administrative lawsuit, the Supreme Court clarified that burden of proof is the defendant's (government agency's) responsibility, indicating Chinese government's adoption of international standards for FOI litigations.

Most FOI laws have three appeals and oversight mechanisms: an internal review (administrative reconsideration), an external review (review by an independent

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925 The United States is one of many countries that oblige agencies to accept the burden of proof in FOI lawsuits, because the agency must demonstrate full discharge of FOIA obligations. Department of Justice v. Tax Analysts, 492 U.S. 136,142 n.3 (1989) (ruling that"the burden is on the agency to demonstrate, not the requester to disprove, that the materials sought...have not been improperly withheld").
information commission or ombudsman) and the court review.\textsuperscript{926} The internal review can be inexpensive and rapid, but it tends to uphold FOI denials.\textsuperscript{927} The court review is independent and can make binding decisions, but it is expensive and time-consuming. Judges are usually deferential to agencies and most of judges lack expertise needed for systematic FOI investigations.\textsuperscript{928} The external review tends to uphold disclosure. Agencies usually accept the non-binding decisions.\textsuperscript{929} So FOI experts consider the external review, “the most effective system of oversight.”\textsuperscript{930}


The three oversight mechanisms in *U.S. FOIA* are valuable examples: When fully or partially denied a U.S. FOIA request, the requestor can apply for an internal review appealing the decision.\(^9^3^1\) Requestors may also appeal when governmental agencies reject requests due to “no records,” deny requests for fee waivers or expedited processing.\(^9^3^2\) The FOIA requester center of each agency reports the appeal to the FOIA Public Liaison. If the dispute reaches no resolution, the Chief FOIA Officer of each agency receives notifications, and may extend to the Attorney General of the United States.\(^9^3^3\) After exhausting the internal review processes,\(^9^3^4\) the complainant may embark upon an external review, a court review, or an appeal to the Office of Governmental Information Services,\(^9^3^5\) “the Federal FOIA ombudsman”\(^9^3^6\) that mediates disputes between persons making FOIA requests and agencies. An appeal to the federal court system is possible.\(^9^3^7\)

Chinese legal scholars who formulated the *Academic Draft of OGI Regulations 2002* borrowed heavily from the international practice of appeals and oversight. In addition to

\(^9^3^1\) S. REP. No. 110-59, at 10 (2007).

\(^9^3^2\) *DOJ FOIA Regulations*, 28 C.F.R. § 16.6(c) (2008).


\(^9^3^7\) S. REP. No. 110-59, at 10 (2007).
the administrative review system and the judicial remedy, the Draft provides
establishment of an independent information commission consisting of prestigious
experts\textsuperscript{938} and chief information officers\textsuperscript{939} from official agencies above the county level in
the people’s government.\textsuperscript{940} All commission members are part-time, and the commission
has the power to request documents from relevant official bodies for investigative
purposes,\textsuperscript{941} can render non-binding decisions for disputes between requesters and
agencies.\textsuperscript{942} The commission may recommend administrative penalty to punish officials
violating OGI Regulations.\textsuperscript{943}

\textsuperscript{938} Article 27, Academic Draft of OGI Regulations 2002. ACADEMIC DRAFT OF OGI REGULATIONS:
DRAFT, EXPLANATION, RATIONALE AND LEGISLATIVE EXAMPLES [政府信息公开条例专家建议稿-草案、说明、理由、立法例] 10-11 (Hanhua Zhou ed., Chinese Legal Publishing
House, 2003).

\textsuperscript{939} Article 25, Academic Draft of OGI Regulations 2002. Article 25 provides the
establishment of the chief information officer and the CIO office for governmental agencies
at various levels. ACADEMIC DRAFT OF OGI REGULATIONS: DRAFT, EXPLANATION, RATIONALE AND
LEGISLATIVE EXAMPLES [政府信息公开条例专家建议稿-草案、说明、理由、立法例] 9

\textsuperscript{940} Article 27, Academic Draft of OGI Regulations 2002. Article 27 provides for more than
one third of information commission members to be academics. ACADEMIC DRAFT OF OGI
REGULATIONS: DRAFT, EXPLANATION, RATIONALE AND LEGISLATIVE EXAMPLES [政府信息公开条例专家建议稿-草案、说明、理由、立法例] 10 (Hanhua Zhou ed., Chinese Legal Publishing
House, 2003).

\textsuperscript{941} Article 32, Academic Draft of OGI Regulations 2002. ACADEMIC DRAFT OF OGI REGULATIONS:
DRAFT, EXPLANATION, RATIONALE AND LEGISLATIVE EXAMPLES [政府信息公开条例专家建议稿-草案、说明、理由、立法例] 12 (Hanhua Zhou ed., Chinese Legal Publishing
House, 2003).

\textsuperscript{942} Article 31, Academic Draft of OGI Regulations 2002. ACADEMIC DRAFT OF OGI REGULATIONS:
DRAFT, EXPLANATION, RATIONALE AND LEGISLATIVE EXAMPLES [政府信息公开条例专家建议稿-草案、说明、理由、立法例] 11 (Hanhua Zhou ed., Chinese Legal Publishing
House, 2003).

\textsuperscript{943} Article 33, Academic Draft of OGI Regulations 2002. ACADEMIC DRAFT OF OGI REGULATIONS:
DRAFT, EXPLANATION, RATIONALE AND LEGISLATIVE EXAMPLES [政府信息公开条例专家建议稿-草案、说明、理由、立法例] 12 (Hanhua Zhou ed., Chinese Legal Publishing
House, 2003).
In revising the *Academic Draft*, however, the State Council Legislative Affairs Office rejected the proposal establishing the independent OGI information commission and the office of chief information officer.\(^{944}\) The consequences of this rejection are grave. China lost an opportunity to embrace international standards in FOI oversight. The lack of an independent body to mediate OGI disputes casts doubt on the effective implementation of the law.

However, an encouraging aspect in appeal and oversight under the Chinese law is present: the lower threshold for filing an OGI lawsuit in China. Under standard administrative procedures, exhausting internal appeals is necessary before seeking external review and judicial remedy.\(^{945}\) But Chinese applicants for information may resort to judicial review without exhausting administrative review.\(^{946}\) Apparently, the Chinese government, wittingly or unwittingly, encouraged use of judicial remedies. This attitude is

\(^{944}\) The CASS legal scholar, Hanhua Zhou, was among experts drafting Academic Draft of OGI Regulations in 2002. Zhou speculated that the State Council jettisoned the idea of OGI information commissions and chief information officers because the proposal is too ambitious for *OGI Regulations*. Only laws passed by the National People’s Congress have the power to handle issues like configuring agencies and personnel arrangements. Ming Tu, *Behind-the-Scene Proponent of OGI Regulations* [政府信息公开条例的幕后推手], Phoenix TV, March 21, 2007, <http://phtv.ifeng.com/phoenixtv/73013082527367168/20070321/907978.shtml> (last visited November 18, 2012). The idea of creating the chief information officer (CIO) system was clearly inspired by practices of many other FOI countries including the United States. For detailed analysis of the CIO system in the United States, see Charles R McClure & John Carlo Bertot, *The Chief Information Officer (CIO): Assessing Its Impact*, 17 *GOVERNMENT INFORMATION QUARTERLY* 7, 7-12 (2000).

\(^{945}\) The United States is such an example. *A U.S. FOIA* requester must exhaust “administrative remedies” before appealing to the court. 5 U.S.C. § 552(a)(6)(C)(i)(2006).

\(^{946}\) Article 33 of *OGI Regulations* provides that individuals and organizations may apply for administrative reconsideration or file an administrative lawsuit. The law does not specify which review (administrative or judicial) should be first.
rational in the Chinese context because litigation expenses in China are relatively low.\textsuperscript{947} Furthermore, the Chinese people's preoccupation has long been resolution of disputes outside court because of cultural and societal proclivities.\textsuperscript{948} \textit{OGI Regulations}' framers have good reason to believe that most requesters of information would not avoid administrative reconsideration and flood courts with OGI cases.

\textbf{Sanctions on Public Authorities and Employees}

Similar to other FOI laws in the world, \textit{OGI Regulations} include provisions for imposing sanctions on public authorities and employees for violating the law. Accordingly, \textsuperscript{947}Steven C. Bennett is a partner in the New York City offices of Jones Day. He specializes in international litigation. When talking about the price of lawsuits in China, Bennett said, “The cost of litigation usually is lower since litigation in China is a relatively fast process with few documents and no discovery.” Steven C. Bennett, \textit{Litigation in China: Ten Things You Must Know}, The Metropolitan Corporate Counsel, October 1, 2008, \texttt{<www.metrocorpconseulf.com/pdf/2008/October/19.pdf>} (last visited November 18, 2012). The costs of litigation are much higher in the United States and many other countries. The rising costs of litigation are one of the most serious crises facing the legal profession in the United States. Leonard S. Janofsky, \textit{A.B.A. Attacks Delay and the High Cost of Litigation}, \textit{65 American Bar Association Journal} 1323 (1979); Leonard S. Janofsky, \textit{Facing the Crises of Court Costs and Delay-Initiatives for the Bar}, \textit{7B Leader} 22 (1981-1982).

\textsuperscript{948}The reluctance of the Chinese for suing rooted in the Chinese traditional culture. Confucianism, Taoism and Buddhism all play a role in this regard. Deeply influenced by the thought of harmony and unity, officials in ancient China are required to discourage litigation. People are guided to detest litigation and pursue settlement of disputes by consultation. This social ethos contribute to the popularity of “he shi lao,” elders acting as mediators or facilitators to resolve conflicts arising from family, community and inter-village disputes. Xiaofeng Wu, \textit{Understanding of Criminal Reconciliation in Ancient China}, \textit{5 Frontiers of Law in China} 95, 95-96 (2010), \texttt{<http://www.springerlink.com/content/u45m7737438351jr/fulltext.pdf>} (last visited November 18, 2012); Dennis Sing-Wing Wong, \textit{Restorative Justice for Juveniles in Hong Kong: Reflections of a Practitioner}, paper from “Building a Global Alliance for Restorative Practices and Family Empowerment, Part 3,” the IIRP’s Sixth International Conference on Conferencing, Circles and other Restorative Practices, March 3-5, 2005, Penrith, New South Wales, Australia, at 81, \texttt{<http://personal.cityu.edu.hk/~ssswong/au05_wong.pdf>} (last visited November 18, 2012).
if an administrative organ fails to establish the confidentiality review system for releasing information, the supervisory organ or the administrative organ at the next higher level shall order corrective measures. If the circumstances are serious, imposition of administrative disciplinary measures on the principally responsible person(s) are possible. Most importantly, administrative sanctions and criminal penalties may accrue to official agencies, agencies' leaders who are responsible for OGI activities and relevant employees if they violate provisions of OGI Regulations and have engaged in:

1) Failure to fulfill, in accordance with the law, open government information obligations;
2) Failure to timely update the contents of government information that has been disclosed, the guide to open government information and the catalogue of open government information;
3) Collecting fees in violation of provisions;
4) Providing governmental information as a paid service through other organizations or individuals;
5) Disclosing government information that should not be disclosed, and

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949 OGI Regulations 2007, Article 34.

950 Supervisory organs are a part of the people's government. They exercise supervision over state administrative organs, governmental functionaries, and other personnel appointed by state administrative organs. Administrative Supervision Law 1997, Article 2. Supervisory organs run from the central level to the county level. The central level supervisory organ is the Ministry of Supervision (http://www.mos.gov.cn/mos/cms/html/3/index.html).


952 OGI Regulations 2007. Art.34.

6) Other actions that violate the provisions of these Regulations.\textsuperscript{954}

In many aspects, \textit{OGI Regulations} are consistent with international standards for sanctions on governmental agencies and officials. The sanctions indicate the Chinese government’s desire for agencies at various levels to appreciate the seriousness of penalties on noncompliance. Removing sub-paragraph (5) of Article 35\textsuperscript{955} could have strengthened the law. This clause removes protection for Chinese officials from sanctions if they disclosed, even in good faith, information not subject to disclosure. This clause is likely to strengthen the culture of secrecy in the Chinese bureaucracy because, “officials may be excessively cautious about requests for information...to avoid any personal risk.”\textsuperscript{956} Another weakness in the sanctions is that \textit{OGI Regulations} fail to include provisions for administrative organs to provide compensation for harms incurred from OGI violations.\textsuperscript{957}

\textbf{E-FOI and Whistleblowing}

\textsuperscript{954} \textit{OGI Regulations 2007}. Art.35.

\textsuperscript{955} \textit{OGI Regulations 2007}. Art.35.


As the world enters the digital age, disseminating and accessing information becomes increasingly efficient, convenient and effective. Many national FOI laws prescribe an agency’s duties to publicize information on websites\(^{958}\) and provide requestors a mechanism to apply for information using electronic mail or web-based forms.\(^{959}\) However, the digital divide prevents people from accessing electronic information. Older people tend to avoid using electronic devices. Consequently, most FOI laws require governmental agencies to prepare documents and records in both electronic and physical forms.\(^{960}\)

The Chinese law coincides with international standards by providing that administrative organs proactively disclose information by means of governmental websites.\(^{961}\) International best practices include stipulation for filing requests in written form (including digital and electronic forms).\(^{962}\)


Similar to the United States and many other countries, China encourages governmental agencies to establish public reading rooms and other facilities to allow access to both electronic and physical copies of documents and records.  

China's full embrace of e-FOI is in stark contrast to a flat refusal to protect whistleblowers from retaliation. A whistleblower is an individual (usually a government or company employee) who discloses an alleged wrongdoing in organizations such as governmental departments and companies. Article 19, a London-based organization advancing global freedom of information, lists protection for whistleblowers who frequently face reprisals from people in power, as the ninth principle of freedom of

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963 OGI Regulations 2007. Art. 16. Article 16 provides that the people's governments at all levels shall establish official information reading places in the state archives and public libraries and install appropriate facilities and equipment for the convenience of citizens, legal persons and other organizations to obtain governmental information. Administrative organs may, as needed, establish places and facilities such as public reading rooms, materials request stations, information bulletin boards, and electronic information screens, to disclose official information.

964 Wrongdoing includes “the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious maladministration regarding a public body. It also includes a serious threat to health, safety or the environment, whether linked to individual wrongdoing or not.” Article 19, The Public’s Right to Know: Principles on Freedom of Information Legislation 10 (London, June 1999), available at <http://www.article19.org/data/files/pdfs/standards/righttoknow.pdf> (last visited November 18, 2012).
information legislation. Article 19 argued that whistleblowers must be protected from any legal, administrative or employment-related penalties as long as they “acted in good faith” and had evidence to support their belief that the information was “substantially true.”

The Article 19 principle, widely accepted by the international FOI community, includes over 30 countries, which adopted specific whistleblower protections in FOI laws. The Freedom of Press Act in Sweden is a typical example of an FOI law insulating whistleblowers from reprisal. Under the Act, criticizing the actions of official bodies anonymously is a “fundamental right” of public servants. The United States does not have whistleblower protection in FOI laws; however, other relevant laws include protections. Australia has no whistleblowing component in its FOI laws; however,

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separate whistleblowing protection legislations were introduced at state and territory levels.\textsuperscript{970}

China has no whistleblower protection in any laws including \textit{OGI Regulations}. Even the progressive \textit{Academic Draft of OGI Regulations} does not mention whistleblower protection. Perhaps, drawing a lesson from the Cultural Revolution, the Chinese government today seems uncomfortable with mobilizing common people to counter corruption in public and private entities. Social stability concerns are another major obstacle for the whistleblower legislation; however, contending never enacting a whistleblower law in China is premature.

Increasing numbers of people in China today are aware of the importance of whistleblower legislation. Without such a law, the chances for disclosure of negative activities by official agencies and private entities would severely decrease. When discussing resolutions for widespread contaminated food scandals in China, a prestigious

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economist, a member of the NPC Standing Committee and two citizen bloggers all suggested consideration of whistleblower protection law.

Summary and Conclusion

This chapter examines the statutory language of OGI Regulations and relevant legal interpretations. After comparing the Chinese law with other national FOI laws, such as U.S. FOIA and international best practices, the chapter identifies strengths and weakness of OGI Regulations in areas widely recognized as necessary for most FOI legislation: legal standing, legislative purpose, types of bodies covered, accessible materials; affirmative publication; qualification for inquirer, fees for access and response time limits, exemptions, appeals and oversight, sanctions, e-FOI, and whistleblowing.

971 Xianping Lang, Campaigns Do Not Work for Managing Economy [治理经济不能靠“运动”], Jrj.com, May 16, 2012, <http://finance.jrj.com.cn/opinion/2012/05/16091613139548-1.shtml> (last visited November 18, 2012). As one of the most influential economists in China, Xianping Lang works for the Chinese University of Hong Kong as Chair Professor of Finance. Lang holds a doctoral degree from the Wharton School of Business, the University of Pennsylvania. Lang himself was the whistleblower in corporate scandals in China.


OGI Regulations, on the whole, are weak in reactive disclosure of information. Many factors significantly constrain OGI requesters’ abilities to apply for information, not proactively disclosed. The law’s exemptions are not clearly and narrowly defined and fails to include a substantial harm test and nor apply a public interest test to all exemptions. Regulations provide mandatory rather than discretionary exceptions. Governmental officials have no protection from sanctions if they disclosed information not intended for publication. The law fails to include the principle of maximum disclosure, and it is equivocal in establishing a statutory right of access. OGI Regulations fail to take precedence over other laws and thus are unable to supersede conflicting laws. The law applies a special needs test to the eligibility of applicants for information and fails to establish an independent oversight body. Documents and records held or generated by the party are not covered by OGI Regulations. The law does not protect whistleblowers from retaliation. All these factors contribute to decreased willingness and capacity of governmental officials to disclose information upon request and contribute to strengthened belief among requesters that governmental information is off-limits to the common people.

OGI Regulations are strongly proactive for disclosure of information, with a very detailed list of information for which agencies have the initiative to release. In order to ensure compliance with proactive disclosure, the law provides various legal measures, such as requiring agencies to publicize information via governmental websites and press conferences, send information to national archives and public libraries, create public reading rooms and other facilities easily accessible to the general public, formulate OGI guides, OGI catalogues and OGI annual reports. Administrative organs must proactively disclose information within a specified time, a practice rare in other FOI countries. In order
to show the seriousness of the law, *OGI Regulations* provide sanctions for agencies and responsible officials who fail to fulfill their duty of proactively disclosing information. Another striking feature of the law is that the obligations of proactive disclosure of information do not only extend to governmental agencies at all levels, but also apply to all quasi-governmental agencies at corresponding levels, all public enterprises and institutions across the country.

The emphasis of the Chinese government on proactive disclosure rather than reactive dissemination\(^\text{974}\) is sensible in the Chinese context because disclosing information on governmental agencies’ own initiative may be more effective than reactive disclosure for “prompting officials to abandon their longstanding secretive and reactive informational management approach, proven outdated in the expanded Chinese informational environment.”\(^\text{975}\) The prominence of proactive disclosure in FOI laws is also rational in the global context. In recent years, a growing global consensus of FOI practices shows that affirmative disclosure is gradually replacing reactive disclosure.\(^\text{976}\) FOI scholars,\(^\text{977}\) FOI

\(^{974}\) This finding is consistent with prior research conducted by many FOI scholars. For example, FOI expert Weibing Xiao concluded that push model (proactive disclosure), not pull model (reactive disclosure), characterizes China’s current FOI system. Weibing Xiao, *China’s Limited Push Model of FOI Legislation*, 27 Government Information Quarterly 346, 346-51 (2010); Weibing Xiao, *Freedom of Information Reform in China: Information Flow Analysis* 80-88 (2011).


practitioners, international organizations, and governments across the globe call for the shift because the traditional reactive mode of disclosing information has proven to be inefficient, costly, and often confrontational.

In totality, the system of proactive disclosure of information in China is far from perfect. Undeniably, the system of proactive disclosure is better designed than the access request regimen from the perspective of statutory language. However, many factors that debilitate reactive disclosure also hinder proactive disclosure. For instance, poorly defined exemptions and punishment for inappropriate disclosure may lead officials to withhold, improperly, information. The reason is simple: The law forces officials to err for safety in order to avoid personal risk. Without doubt, a large amount of governmental information

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980 The United States revised its FOI legislation in 1996 to accommodate the information age, thus paving the way for more aggressive electronic disclosure of information in a proactive manner. On May 21, 2009, the U.S. Government launched the website <http://www.data.gov/> with the purpose of providing direct public access to machine-readable datasets generated by the Executive Branch of the U.S. Federal Government. On January 21, 2010, the British government launched a similar website <http://data.gov.uk/> that allows governmental agencies the potential to disseminate, proactively, information in a user-friendly way. On June 18, 2009, the world’s first treaty on access to information, the Council of Europe Convention on Access to Official Documents, containing provisions for proactive disclosure, became available for signature, <http://conventions.coe.int/Treaty/en/Treaties/html/205.htm> (last visited November 18, 2012).
that should have proactive disclosure will remain sealed due to presumption of nondisclosure implicit in OGI Regulations.

Legal scholar, Martin Halstuk, identified six common characteristics of effective FOI laws: (1) Disclosure should be the standard and nondisclosure the exception; (2) any person is entitled to information for any purpose; (3) exemptions must be clearly and narrowly drawn; (4) independent review should be available; (5) governmental agencies are required to publish certain information affirmatively, and (6) request fees should be reasonable. In light of the criteria, it is safe to conclude that China’s FOI law is barely effective because four of the six above-mentioned criteria remain unmet.

China could have embraced a better-designed FOI law if leaders desired. The Academic Draft was very progressive and adopted many practices proven successful by many other national FOI laws. Nonetheless, the Chinese government substantially revised the Academic Draft and discarded many such practices. No officials have explained the considerations behind the government’s choice, but reasons are not obscure. Under the current Chinese political and economic environment, many leaders believe that OGI Regulations, if too progressive and aggressive, would cause unpredictable social instability and even turmoil. The current version of OGI Regulations represents what most people in power, reform-minded or conservative, are willing to accept.

The incremental, gradual, experimental approach to lawmaking is evident not only in the legislative process of OGI Regulations but also in the enactment of many other laws

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982 OGI Regulations 2007 obviously meet the No.5 criterion (“governmental agencies are required by the law to publish certain information affirmatively”) and the No. 6 criterion (“request fees should be reasonable”).
and regulations in China. Above all, such an approach characterizes the post-Mao Chinese political and economic reform masterminded by Deng. Ping Jiang is a professor of China University of Political Science and Law and a leading scholar in the field of Chinese civil laws. He argued that progress offset by setbacks has been the theme for the rule of law in China over the past 30 years.\textsuperscript{983} Even foreign legal scholars are cognizant of the incremental nature of China’s lawmaker and regulations in China. Above all, such an approach characterizes the post-Mao Chinese political and economic reform masterminded by Deng. Ping Jiang is a professor of China University of Political Science and Law and a leading scholar in the field of Chinese civil laws. He argued that progress offset by setbacks has been the theme for the rule of law in China over the past 30 years.\textsuperscript{983} Even foreign legal scholars are cognizant of the incremental nature of China’s lawmaking. An observer of China’s law reforms noted that China’s rule of law remains an evolving, “two-steps-forward, one-step-back dance.”\textsuperscript{984} Another famous Chinese saying, “feeling for rocks while crossing the river,” characterizes the gradual evolution of Chinese law.

For OGI lawmakers in China, striking a subtle balance between international standards and Chinese characteristics is always a challenge. Some scholars accuse OGI Regulations of being too reluctant to embrace international standards;\textsuperscript{985} others believe such a cautious and incremental approach is necessary for gradual reform, and too rapid change would very likely result in unfathomable and tremendous risks for the country.\textsuperscript{986} The OGI lawmakers side with the latter.


\textsuperscript{986} Doug Guthrie, Associate Professor of Sociology at New York University, contended that the incremental nature of Chinese legal reform is understandable because the construction of a workable legal system is hard work. Training of lawyers and change of culture all require time and effort. Doug Guthrie, \textit{The Quiet Revolution: The Emergence of Capitalism},
Chapter Seven: What the Law Delivers: Implementation of OGI Regulations

Introduction

This chapter will discuss enforcement of OGI Regulations since the legislation became effective on May 1, 2008. Many observers in the West view China’s passage of the freedom of information legislation with perplexity and suspicion. After exploring the potential legal, institutional, administrative, social, and economic barriers for the implementation of OGI Regulations, many scholars, both Chinese and foreign, predicted with pessimism that the law was likely to fail or at best serve merely as window dressing for the Chinese Communist Party.987

Reservations in academia are understandable for two reasons: First, as discussed in Chapter Six, OGI Regulations have many inherent drawbacks. The law promises limited access to information, and it is not a comprehensive FOI law. Furthermore, challenges would still remain even if China had a substantial FOI law. Drafting a piece of legislation is one thing whereas effective implementation is another. Renowned international FOI scholar David Banisar said, “Poor implementation can hobble even the best designed [FOI]


act.”

Second, the gap between the FOI law’s promises and its deliverables in practice, as present in emerging democracies such as South Africa and Thailand, is not unusual. Indeed, such a gap is present in liberal democracies such as the United States, Sweden, and Australia. It would be unsurprising to see OGI Regulations flounder in the Chinese authoritarian regime whose people’s right to know lacks strong constitutional, cultural and legal support.

This chapter will examine implementation of the law in terms of both proactive and reactive disclosure and identify strengths and weaknesses of the law in practice. The section will explore various factors contributing to those strengths and problems.

“[V]igorous implementation can clarify and improve upon a poorly written act.” This chapter aims to resolve the issue of whether China’s poorly written act can deliver overall positive results in practice.

**Implementation of Proactive Disclosure in China**

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Disclosing the hidden or unknown is impossible. Long before the State Council promulgated national *OGI Regulations* in 2007, the Chinese government at various levels began establishing a record keeping system that allows easy collection, indexing, storage, and disposal of information. Governmental bodies began to maintain a register of all official documents. When *OGI Regulations* became actual in May 2008, governmental agencies throughout the country began releasing information according to the “affirmative disclosure” provision of the law.

*A Large Variety of Communication Channels*

access facilities, press conferences, “Government’s Sunshine Hotlines,” social networking sites, media interviews, OGI annual reports and guides, declassified archives, OGI publications, and other OGI publicity activities.

In order to ensure maximum distribution of governmental gazettes, official agencies at various levels provide free electronic access to users. Websites’ visitors can search online gazettes easily. Relevant organizations and OGI access centers receive free hard copies of gazettes.

OGI access facilities exist throughout the country. Normally, governmental service centers, state and local archival institutions, and public libraries are their locations. Anyone can use these facilities to access proactively publicized information maintained in digital and physical forms.

For example, governmental agencies at various levels in Sichuan Province conducted 1660 press conferences in 2011. In the same year, the Ministry of Foreign Affairs held 133 press conferences.

“Government’s Sunshine Hotlines” enable leaders of various agencies to appear on radio shows to chat, live, with listeners. Jointly established between radio stations and agencies, the Hotlines have wide acceptance for proactively disseminating official information of greatest concern to ordinary people.

Government’s websites, online forums, and blogs are popular among officials. Even more popular is microblogging. While China blocks Twitter, agencies and officials at various levels use Twitter-like microblogging sites (weibo) to disseminate information. For example, Chongqing is the first provincial-level government to establish microblogging accounts. The weibo site created by the Chengdu people’s government is the first government weibo with more than one million followers. The weibo, owned by Beijing Public Security Bureau, on sina.com is the most popular government weibo in China with more than 2.46 million followers. By the end of 2011, the number of governmental weibos in China exceeds 50,000. The 689 governmental and official microblogging sites have more than 100,000 followers. Many party schools in China list weibo training as mandatory for attending officials. Xingyu Xu, Information Office of Chongqing Government Sets up Weibo Account, Leading All Provincial Governments [重庆市政务微博开通微博 创省级微博问政先河], Cqnews.net, May 19, 2011, <http://v.cqnews.net/first/2011-05/20/content_6429202.htm> (last visited November 18, 2012); Assessment Report on Chinese Government Weibo Published, Government Weibo Created on Sina.com Far Exceeds Other Websites [中国政务微博客评估报告发布，新浪政务微博数量领先 ], PEOPLE’S DAILY ONLINE, February 10, 2012, <http://media.people.com.cn/GB/40606/17078411.html> (last visited November 18, 2012); Chunyu Hua, Number of Government Weibo in China Reaches 50,561 As of December 2011 [截至 2011 年底我国政务微博客总数达到 50561 个], Gov.cn,
Steady Growth of Information Proactively Disseminated


Many OGI annual reports list the number of media interviews officials arranged with journalists in the corresponding year. Officials in China are more and more willing to accept interview requests from journalists. Hongzhong Li, the party secretary of Hubei Province, is a good example. Li took a reporter’s tape recorder and threatened to complain in 2010 during a group interview in Beijing because the reporter raised a sensitive question. In 2012, Li changed attitudes; he asked advisors not to block journalists’ requests for interviews. Wenxue Li, Why “Don’t Stop Journalists” Becomes Newsworthy? [湖北省委书记李鸿忠“不要阻挡记者”何以成“新闻”], China.com.cn, March 5, 2012, <http://opinion.china.com.cn/opinion_96_35996.html> (last visited November 18, 2012).

Most agencies from central to township levels publish OGI annual reports, OGI guides, and OGI indexes in order to facilitate the people’s access to proactively released information. However, governmental agencies in different localities show sharply different willingness to comply with OGI Regulations requirement to publish annual reports. March 31, 2009 was the deadline for governmental agencies at all levels to submit the first annual OGI assessment report. Among 31 provincial-level governments in China, 13 governments failed to meet the deadline. Instead, some governments in Shanghai, Beijing, and Sichuan not only met the deadline but also submitted annual reports containing a wide variety of information.

Before adoption of OGI Regulations in 2008, many official archives scheduled for declassification under Archives Law 1988 remained sealed. Since enactment of Regulations, agencies have become increasingly progressive in opening archives to the public. For example, in 2011, more than 600,000 volumes of archives became available for public inspection in the city of Chongqing. By the end of 2011, the Ministry of Foreign Affairs opened more than 81,000 diplomatic files whose dates of creation range from 1949 to 1965. The State Archives Administration opened the Central Archives on 31 May 2011 to more than 70 Chinese and foreign reporters. China Opens Central Archives to Media, China Daily, May 31, 2011, <http://www.chinadaily.com.cn/china/2011-05/31/content_12614433.htm> (last visited November 18, 2012).

Many agencies often publish OGI leaflets and OGI whitepapers. They also arrange OGI Publicity Week or OGI Publicity Month to enhance public awareness of the law. During the publicity weeks or months, during OGI forums and training sessions, ordinary citizens receive invitations to attend many publicity activities.
According to the data gathered (see Tables from 7-1 to 7-17), the ministries, commissions and other organizations directly controlled by the State Council disclosed a total of 400,228 items containing official information in 2008, released 7,132,207 informational items in 2009, publicized 1,570,090 items of information in 2010, and distributed 2,969,187 items of official information in 2011. These releases attest to steady growth in the amount of governmental information proactively made available in the last four years. Agencies, ranging from provincial to township levels, affirmatively publicized an approximate total of 10,028,780 items in 2008, released 24,874,766 pieces of information in 2009, promulgated 31,256,156 informational items in 2010, and disseminated 30,999,281 official items in 2011. In sum, the Chinese government, at all levels, affirmatively released a total of 109,230,695 items of governmental information from May 2008 to December 2011. Central agencies released much less information than provincial and local counterparts. This is understandable from the Chinese context, because of the much smaller size of central agencies than their provincial and local equivalents, and the relative detachment of central agencies from ordinary people’s daily lives.

First Category of Information Publicized

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1002 Release of information reached a peak in 2009 with the release of standard governmental information and information, generated or obtained prior to May 2008, contributed to the explosive growth in number of informational items openly available. After 2009, the volume of official information proactively released annually by central agencies declined but growth persisted steadily. The same pattern applies to provincial and local agencies.
Documents and records affirmatively disclosed by various levels of administrative organs cover a large variety of areas<sup>1003</sup> and represent four categories: The first category constituted standard information of governments' and leaderships' activities, agencies' structures, functions, and working procedures required by proactive provisions of <i>OGI Regulations</i>.<sup>1004</sup> Agencies generally were compliant in proactively disclosing such information since the information was not sensitive. The provincial capital cities of Kunming and Changsha gained renown for publicizing all leading officials' office telephone numbers and cellular phone numbers in local newspapers.<sup>1005</sup> However, the disclosure of


<sup>1004</sup> <i>OGI Regulations 2007</i>. Art.9.

<sup>1005</sup> All the leading officials (e.g., party secretary, mayor, police chief) in the capital city of Kunming, Yunnan Province, published on 16 February 2012 in the 4-page supplement of <i>Kunming Daily</i> their names, official titles, job responsibilities and office phone numbers. The newspaper was immediately sold out. The capital city of Changsha in Hunan Province was even more aggressive. On December 30, 2011, <i>Changsha Evening News</i> published in its 7-page supplement all the contact information for more than 1,000 leading officials. The contact information included names, job responsibilities, office locations, office phone numbers and cell phone numbers. As of February 2012, a total number of 5,268 leading officials in Changsha have released their contact information to the general public. Administrative penalties will be imposed on Changsha officials who frequently fail to answer citizens’ telephone inquiries. Yunfeng Xu, <i>Kunming Publishes Leading Officials’ Phone Numbers in Newspaper</i> [昆明登报公布“一把手”电话] <i>PEOPLE’S DAILY</i>, February 19, 2008, <http://politics.people.com.cn/GB/14562/6892283.html> (last visited November 18, 2012); Xi Yang, <i>Changsha Plans to Impose Sanctions on Officials Who Always Fail to Answer Phone Inquires from Citizens</i> [长沙市将出台办法 领导长期不接市民电话将被问责] <i>CHINA DAILY</i>, January 12, 2012, <http://www.chinadaily.com.cn/dfpd/2012-01/12/content_14433551.htm>; (last visited November 18, 2012); Xiaozhou Su, <i>Aftermath of Disclosing Contact Phone Numbers of More Than 5,000 Officials</i> [5000 多名官员公布联系电话之后 ......] XINHUA NEWS AGENCY, February 13, 2012, <http://news.xinhuanet.com/politics/2012-02/13/c_111519151.htm> (last visited November 18, 2012).
information, such as the number of leadership positions, brought unexpected consequences for officials through opportunities for ordinary people to identify overstaffing problems in the Chinese bureaucracy and prompted a response from the central government.\footnote{Weibing Xiao, Freedom of Information Reform in China: Information Flow Analysis 99-100 (2011).}

Largely due to proactive disclosure of the number of deputy leadership positions, people became indignant with the overstaffing in many official Chinese organizations.\footnote{In November 2008, citizens found overstaffing of many governmental organizations from posting on official websites. According to the findings, Tielin city’s people’s government in Liaoning Province had 9 deputy mayors and 20 deputy secretary-generals; Xinxiang city’s people’s government in Henan Province had 11 deputy mayors and 16 deputy secretary-generals; Pingjiang County’s people’s government in Hunan Province had 10 vice county mayors and 4 county mayoral assistants. Shuquan Tang, Netizens Suggest that Ministry of Supervision Investigate Overstaffing of Deputy Leaders of Local Governments [网友进言监察部：地方政府副职扎堆 请监督检查！] People’s Daily Online, December 5, 2008, <http://politics.people.com.cn/GB/99014/8468770.html> (last visited November 18, 2012); Weibing Xiao, Freedom of Information Reform in China: Information Flow Analysis 99-100 (2011).}

Responding to public outcry, the central government circulated a notice in January 2009, calling for a reduction in the number of assistants and deputy secretary-generals in local governments.\footnote{Notice on Standardizing Number of Assistants and Deputy Secretary-Generals at Local Level [关于规范地方政府助理和副秘书长配备问题的通知] No 3 [2009] of the Organization Department of the Chinese Communist Party Central Committee. According to the Notice, the position of mayoral assistants is, in principle, not allowed for provincial-level governments. The position of mayoral assistants is, under no circumstances, allowable for governments below the provincial level. The position of deputy secretary-generals is unallowable for county-level governments.}

\textit{Second Category of Information Publicized}

The second category of information that official agencies vigorously and proactively disclosed was information on rulemaking or decision-making, which expects public
participation or at least familiarity.\textsuperscript{1009} For example, drafts of administrative regulations and rules, announced in a timely manner, had wide publication in order to seek public opinion.\textsuperscript{1010} In order to ensure participation in governmental decision-making, the proactive disclosure announced modifications to public holidays,\textsuperscript{1011} fuel tax reform draft plan,\textsuperscript{1012} health care reform initiative,\textsuperscript{1013} and environmental impact assessment.\textsuperscript{1014}

\textsuperscript{1009} OG\textit{I} Regulations 2007. Art.9; Wei\textit{B}ing Xiao, \textit{FREEDOM OF INFORMATION REFORM IN CHINA: INFORMATION FLOW ANALYSIS} 99 (2011).

\textsuperscript{1010} According to the 2011 OG\textit{I} annual report of the State Council Legislative Affairs Office, submission of as many as 19 drafts of administrative regulations submitted for public commentary occurred in 2011. Anyone in the world could anonymously log onto the Chinese government website (http://yijian.chinalaw.gov.cn/lisms/action/loginAction.do?loginCookie=loginCookie) and provide comments on the drafts of administrative regulations. Shanghai Legislative Affairs Office, Shandong Legislative Affairs Office and other relevant agencies have similar online systems for submitting comments on drafts of administrative rules.


\textsuperscript{1012} The fuel reform draft plan opened for public comments between December 5 and December 12, 2008 by the National Development and Reform Commission, the Ministry of Finance, the Ministry of Transport and the State Administration of Taxation. Most people surveyed were in favor of the changes. Most Chinese Favor Fuel Tax Reform Plan, \textit{CHINA DAILY}, December 13, 2008, <http://www.chinadaily.com.cn/china/2008-12/13/content_7302208.htm> (last visited November 18, 2012).

\textsuperscript{1013} The draft of the healthcare reform plan opened by the National Development and Reform Commission for public comments between October 14 and November 14 2008. The reform plan aimed to address the growing health care crisis in the country and promised to provide universal healthcare by 2020. The reform plan, announced in April 2009, considered public comments. \textit{New Healthcare Reform Seeks Public Input} [新医改公开征求民众意见], \textit{PEOPLE’S DAILY OVERSEAS EDITION}, October 15, 2008, <http://politics.people.com.cn/GB/1026/8173314.html> (last visited November 18,
Third Category of Information Publicized

The third category of information widely disclosed, affirmatively, were government-held records and files involving money collected and spent by public agencies. Access to information of public spending is critical to allow the public to exercise the right to supervise and hold governments accountable. Such information needs extensive distribution to ordinary people, and thus, requires proactive disclosure according to OGI Regulations. The information falling into this category includes, but not limited to: administrative charges, financial budgets and final accounts, administrative expenses and costs, governmental procurement, public spending on health care, education, major construction projects, and other government-funded programs. Resistance to disclosure of


1014 Under the Chinese environmental protection laws, any major construction project needs an environmental impact assessment, supervised by environmental protection agencies at various levels. A project may not begin if the assessment report rates it unfavorably. The State Environmental Protection Administration issued the Interim Rules on Public Participation in Environmental Impact Assessment in 2006. According to Interim Rules, construction companies shall seek public comments for the assessment report. Administration of Environmental Protection Issues Interim Rules on Public Participation in Environmental Impact Assessment [环保总局发布《环评公众参与暂行办法》], XINHUA NEWS AGENCY, February 22, 2006, <http://news.xinhuanet.com/legal/2006-02/22/content_4213031.htm> (last visited November 18, 2012). For example, any Chongqing resident interested in the proposed construction project in the city can access a website (http://www.ppeia.com/index.asp) to provide comments on the assessment reports.

such financial information is enormous among governmental officials for understandable reasons.\textsuperscript{1016} However, under pressure from the central government and party leaders,\textsuperscript{1017} and prominent academics,\textsuperscript{1018} governmental agencies at various levels are becoming increasingly cooperative for their allowing the public to track government-funded expenditures. Beginning in 2009, central agencies began to disclose, affirmatively, financial


\textsuperscript{1017} The party and the central governmental leaders keep emphasizing in recent years the importance of disclosing governmental financial information. In August 2011, the General Office of the Chinese Communist Party Central Committee and the General Office of the State Council issued a joint opinion requiring governmental agencies at various levels to proactively and timely disclose financial budgets and final accounts. \textit{Opinion on Deepening Open Government Affairs and Strengthening Government Service} [关于深化政务公开加强政务服务的意见] printed and distributed by the General Office of the Chinese Communist Party Central Committee and the General Office of the State Council, effective date: August 2, 2011.

\textsuperscript{1018} For example, Hong Jiang and Xixin Wang are two prominent Chinese scholars vigorously attacking the poor performance of the Chinese government in financial transparency. Their criticism has been widely reported. As director of the Center for Public Policy Studies, Shanghai University of Finance and Economics, Jiang was once quoted as saying that “it will take 300 years for the Chinese government to exceed the failing grade [in financial transparency]!” As director of Peking University Center for Public Participation Studies and Supports, Wang was angry about the lack of disclosure of governmental budgets and final accounts at local levels. Wang said to reporters, “No one is punished! No one feel embarrassed!” Xiao Yang, \textit{One Cannot Wait for 300 Years for Finance Under Sunshine!} [阳光财政不能再等 300 年！], \textit{10 SOUTHERN PEOPLE WEEKLY} 46 (2010); Mingyan Wei & Shaofeng Guo, \textit{OGI Regulations Still Encounter Implementation Bottlenecks Four Years after Enforcement} [信息公开条例实施 4 年仍遭执行难], \textit{BEIJING NEWS}, May 15, 2012, \texttt{<http://www.bjnews.com.cn/news/2012/05/15/199113.html>} (last visited November 18, 2012).
Budgets and final accounts.\textsuperscript{1019} The long-awaited disclosure of “three public expenditures,”\textsuperscript{1020} partially realized in 2011, is the result of 93 State Council agencies\textsuperscript{1021} and 44 Beijing people’s government departments\textsuperscript{1022} proactively disclosing, for the first

\textsuperscript{1019} Qingxin Cui, Jie Han & Huajiang Qin, China Plans to Amend Budget Law to Ensure Public Supervision of Government Budgets and Final Accounts [中国拟将预算决算公开规定写入法律以便社会监督], XINHUA NEWS AGENCY, June 26, 2012, <http://news.xinhuanet.com/politics/2012-06/26/c_112293887.htm> (last visited November 18, 2012).

\textsuperscript{1020} “Three public expenditures” (san gong jingfei 三公消费) is the shorthand for governmental expenses for overseas visits, receptions, and public vehicles. The public funded expenses are often shockingly excessive. Many governmental officials travel overseas for family vacations. Many regularly attend free banquets to enjoy expensive food and entertainment. Many purchase luxury sedans and hire drivers. In China, profligate public spending on “the three public expenditures” is a hot-button issue. Most citizens view “three public expenditures” with indignation and call for immediate release of such information. Officials Vow to Restrict Gov’t Vehicles, CAIXIN, February 8, 2012, <http://english.caixin.com/2012-02-08/100354426.html> (last visited November 18, 2012). Traditionally, agencies kept information of “three public expenditures” secret. Glimpses of the seriousness of the “three public expenditures” problem were apparent from visiting a city in Southwest China during 1996 to 2009. During those visits, the journalist from People’s Daily received VIP treatment from officials with invitations to attend extravagant banquets where liquor served normally exceeded 1,000 to 2,000 Chinese yuan ($154-$308) per bottle. Many official vehicles were high-end luxury cars. Shockingly enough, three of the four counties under the jurisdiction of the city are key poverty-stricken counties as listed by the State Council. The provincial governments list one of the counties as a key poverty-stricken county. The average per capita annual income for farmers of this city ranges from 497 Chinese yuan ($76) in 1993 to 4667 Chinese yuan in 2011 ($718).


time, the amounts spent on overseas trips, receptions, and public vehicles. In April 2012, the State Council circulated a notice requiring provincial-level agencies to disclose “three public expenditures” no later than 2014.\textsuperscript{1023} When most local governments were hesitant toward improving financial transparency, one local forerunner surprised the whole country. Despite all the criticism and suspicion,\textsuperscript{1024} a township government in Sichuan Province published, in March 2010, detailed accounts of its January expenditures and earned the nickname, “the first naked township government” in China.\textsuperscript{1025}

**Fourth Category of Information Publicized**

The last category of official information that the Chinese government proactively disseminated was man-made and/or natural disaster information or any information revealing negative activities of the government and officials.\textsuperscript{1026} Understandably, release of

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\textsuperscript{1024} Xunlei Xu, *Baimiao Township Government Seeks Self Defeat?* [白庙乡孤独求败？], *7 West China* 27 (2010).


such crisis or negative information is, to varying degrees, difficult for any government in the world; China is not an exception. Among the four categories of information proactively disclosed, the Chinese bureaucracy guards information populating the last category most assiduously; however, such information often involves vital interests of citizens, legal persons, and other organizations. Consequently, release is a requirement of OGI Regulations.\footnote{OGI Regulations 2007. Art. 9.} Since enactment of OGI Regulations, the Chinese government has become more transparent and proactive in releasing information of natural disasters, such as the Sichuan earthquake,\footnote{The earthquake occurred on May 12, 2008, just 11 days after OGI Regulations became effective. Measured at 8.0 on the Richter scale, the earthquake killed an estimated 69,000 people. Unlike its secretive approach to the Tangshan earthquake in 1976, the Chinese government was unprecedentedly proactive in releasing information of the Sichuan earthquake. Within 20 minutes of the quake, the Xinhua News Agency released a flash report confirming the occurrence of the earthquake from the China Earthquake Administration. China Central Television and some local TV stations soon provided 24-hour coverage of the disaster and relief work. Publicizing and updating the death toll occurred in a timely manner. Chinese and foreign journalists flocked to the disaster zone without governmental restrictions. Official media announced immediately the earthquake relief decisions made by leaders such as Jintao Hu and Jiabao Wen. Ten hours after the earthquake, almost all ministries and commissions under the State Council publicized emergency responses. The Information Office of the State Council held a press conference the day after the quake. Yuan Liao & Zhenzhen Yi, Examine Power of Emergency Information Disclosure from Perspective of Wenchuan Earthquake [由汶川地震看突发事件信息公开的力量], 8 VIEW 76 (2008); Aihua Wang & Zheng Yu, Interpreting Sichuan Earthquake-A Different Picture from What We Used to See, XINHUA NEWS AGENCY, June 12, 2008, <http://news.xinhuanet.com/english/2008-06/12/content_8353152.htm> (last visited November 18, 2012); Suzanne J. Piotrowski, Yahong Zhang, Wenxuan Yu & Weiwei Lin, Key Issues for Implementation of the Chinese Open Government Information Regulations, 69 PUBLIC ADMINISTRATION REVIEW S131 (December 2009).} the snowstorm in southern China,\footnote{The southern part of China experienced the worst snowstorms in nearly 50 years in January 2008. The storm killed more than 100 people and left hundreds of thousands of people stranded while returning home for the Chinese new-year celebration. The Chinese media covered the storm extensively. Chinese Premier Jiabao Wen issued an apology to the Chinese people in a public televised appearance at a railway station in Changsha, Hunan.} various “mass incidents”
such as the taxi driver strike in Chongqing,\textsuperscript{1030} the violent riots in Gansu,\textsuperscript{1031} Guizhou,\textsuperscript{1032} and Xinjiang,\textsuperscript{1033} and major public health and safety incidents, such as the international swine flu crisis\textsuperscript{1034} and the rail collision disaster in Shandong.\textsuperscript{1035}


\textsuperscript{1030} On November 3, 2008, more than 8,000 taxi drivers in Chongqing, China’s largest municipality, struck. The city government held four press conferences within three days after the strike to deal with the situation. A meeting between the party secretary, the mayor, and other governmental officials with taxi drivers and citizen representatives ensued and aired live on national and local media. The prompt disclosure of information contributed to a quick resolution to the strike. Weiiao Li & Hai Deng, \textit{Chaotic Taxi Strike Pays Off in Chongqing}, CAIJING, November 15, 2008, \texttt{<http://english.caijing.com.cn/2008-11-15/110028781.html>} (last visited November 18, 2012).


\textsuperscript{1032} Thousands of people rioted on June 28, 2008 in the county of Weng’an in Guizhou Province. Demonstrators set fire to governmental buildings and overturned cars in angry protests against an alleged police cover-up of the death of a local teenage girl. Zongyuan Shi, the party secretary of Guizhou Province, believed that timely and accurate disclosure of information would be most important response for prompt and peaceful resolution of the Weng’an riot. Wei Liu, \textit{Zongyuan Shi: Most Important Reason for Quick Resolution of Wong’an Incident Is Transparency} [石宗源:坚持信息透明是迅速平息瓮安事件的
Why Is Implementation of Proactive Disclosure Highly Effective?

Many reasons exist for effective implementation of proactive disclosure in China. Some major ones are: First, as discussed in Chapter Four and Five, the Chinese government has accumulated thousands of years of experiences in proactive disclosure. Prior to May 2008, the post-Mao Chinese bureaucracy, at various levels, experimented with various forms of open practices, such as open village affairs, open governmental affairs, and local
OGI initiatives. Proactive disclosure of information after May 2008 is not something new for Chinese public servants.

Second, as discussed in Chapter Six, the design of OGI Regulations places a strong emphasis on proactive disclosure. Unlike many national FOI laws in the world, OGI Regulations clearly specify what information shall have proactive disclosure, methods for publicizing such information, which agencies have obligations for affirmative disclosure, and penalties imposed on administrative organs failing to comply with obligations for proactive disclosure. The law’s design underlines official agencies’ need to be serious toward proactive disclosure.

Third, leaders from the party and the central government have played a key role in ensuring effective implementation of proactive disclosure. As examined in Chapter Five, many leaders, such as President Jintao Hu and Premier Jiabao Wen, expressed strong support for formulation of OGI legislation. Hu, and many other officials have

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1036 This finding is consistent with prior study by FOI scholar Weibing Xiao. Weibing Xiao, Freedom of Information Reform in China: Information Flow Analysis 89-104 (2011).


1038 Jiabao Wen is one of the few leaders who publicly and consistently discuss the necessity of political reform in China. Increasing governmental transparency is one of the key elements of political reform he advocates and is a recurring theme in his work as
continued their commitment to official transparency after the adoption of *OGI Regulations*. In a country where officials exercise tremendous influence over their subordinates, support from leaders provided political incentives essential for the successful enforcement of requirements for proactive disclosure according to *OGI Regulations*.

Fourth, international FOI practices prove that the existence of a central body that “coordinates FOI policy within government”\(^{1039}\) is crucial for successful implementation of FOI law. The central body is “the spider in the web,”\(^{1040}\) and the web of Chinese FOI implementation does not lack the spider, represented by the General Office of the State Council and general offices of the people’s government at various levels. Under *OGI Regulations*, general offices are responsible for coordinating and supervising OGI work in reported to the NPC from 2008 to 2011. In the reports, Wen called for “vigorously enhancing governmental transparency (2008),” “opening government decision-making processes for public inspection (2009),” “ensuring the exercise of government power in the sunshine,” “creating conditions for citizens to supervise and criticize the government (2010),” “speeding up the work of disclosing government budgets,” and “letting citizens know how the money is spent (2011).” Annual work reports to the NPC from 2008 to 2011 are available at

\[\text{http://news.xinhuanet.com/newscenter/2008-03/19/content_7819983.htm}\]
\[\text{http://news.xinhuanet.com/misc/2009-03/14/content_11010350.htm}\]
\[\text{http://news.xinhuanet.com/politics/2010-03/05/content_13103677.htm}\]


the country. The law’s choice is wise because general offices of the people’s government at various levels are effective for coordinating among different agencies and have expertise in managing official information.  

Fifth, improved professional civil service contributes to effective enforcement of proactive disclosure. Officials in China, long preoccupied with privileges for controlling information, were less likely to reject governmental secrecy and embrace transparency. Changing Chinese officials’ worldviews to one that permits more openness and democratic beliefs is difficult. The encouraging factor, after 30 years of reform and openness to the outside world is today’s Chinese agencies’ staffing of individuals who are younger, better educated, more willing to accept job changing and have more knowledge and expertise of OGI issues. Many officials recognize the importance of proactive disclosure of crisis


1043 Eight months after Chinese national OGI Regulations became effective, Qing Wang, a resident of Henan Province’s Nanyang City, sent freedom of information request letters to 181 governmental departments. Wang soon received an avalanche of harassing telephone calls, asking him “Are you a spy? Why are you asking for that information?” One day, Wang went to a local office and visited an official responsible for open official, the official cursed him and said, “There is no open information here!” Wang explained OGI Regulations to the official. The official quickly interrupted Wang and said: “You’ve read a lot of books, huh?” Wang was immediately ejected from the office. Hanmo Zhao, There Is No Open Information Here, CHINA YOUTH DAILY, August 12, 2009, <http://www.cyol.net/zqb/content/2009-08/12/content_2800906.htm> (last visited November 18, 2012).

1044 Weibing Xiao, Freedom of Information Reform in China: Information Flow Analysis 96-97 (2011). Civil Servant Law 2005. Art. 61. Interim Provisions Concerning Civil Servant Training 1996. A survey of mid- and upper-level Chinese bureaucrats found that training of officials on OGI Regulations and associated technology is still lacking. However, officials’ knowledge and expertise for global and domestic OGI issues have steadily increased due to mandatory and standardized OGI training sessions required for all public employees throughout the
information, confessing, “In today’s Internet era, hiding things does not help,” and “will only make things worse.”

Last, rights activists, legal professionals, and interested citizens have played a role in redressing agencies’ non-compliance with proactive disclosure requirements in China. Ordinary citizens, Chinese rights activists like Qing Wang, legal professionals such as Puzheng Han and Jie Cheng all prompted agencies’ compliance with proactive disclosure requirements in China through access requests, lawsuits, and complaints.

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1046 WEIBING XIAO, FREEDOM OF INFORMATION REFORM IN CHINA: INFORMATION FLOW ANALYSIS 102-03(2011).

1047 Many grassroots citizens show tremendous enthusiasm for their right to know government-held information. Most citizens participating in OGI work in China are villagers and ordinary city residents. They exercise their rights persistently and intelligently despite low educational and socioeconomic status. A later section discusses ordinary citizens’ prompting agencies to comply with proactive and reactive disclosure via access requests.

1048 In late 2008, Qing Wang filed OGI requests to 181 governmental agencies in the city of Nanyang in Henan Province. Some officials mistook him for a spy and troublemaker. Although he received only 18 OGI responses, his actions generated extensive media coverage. The negative publicity imposed tremendous pressure on the governmental bodies involved. Lei Chen, Troublemaker Wang Qing [ “刁民”王清], 174 SOUTHERN PEOPLE WEEKLY, August 14, 2009, <http://www.infzm.com/content/32977> (last visited November 18, 2012).

1049 On 1 May 2008, the day when OGI Regulations became effective, Hebei lawyer, Puzheng Han, reported to the State Council that several central agencies failed to disclose national standards for education, health, housing, and urban development. Such standards, covering a wide range of areas like school supplies, food safety, and occupational health, are
Problems for Enforcement of Proactive Disclosure Requirements

The previous discussion indicates that the gap between the promises of OGI Regulations and delivery in practice in terms of proactive disclosure is narrow. Nonetheless, the enforcement of proactive disclosure requirements of OGI Regulations is far from perfect. For some agencies, especially those at the central level ones,1052 even standard information requirements for proactive disclosure by OGI Regulations. The State Council accepted the complaint and required correction by involved agencies. Relevant agencies rectified their improper practices immediately and proposals for a nation-wide searching platform or national standards ensued. Yanxia Wu, Cangzhou Lawyer Complain about Several Central Government Agencies’ Failure to Disclose Information [沧州律师投诉多部委信息不公开], YANZHAO METROPOLIS DAILY, May 6, 2008, at 5, <http://heb.hebei.com.cn/xwzx/hbpd/zydt/200805/t20080506_63460.shtml> (last visited November 18, 2012); Shupeng Liu, Cangzhou Lawyer’s Recommendations Prompt State Council to Respond [沧州律师建言获国务院重视], YANZHAO METROPOLIS DAILY, August 5, 2008, at 5, <http://heb.hebei.com.cn/xwzx/hbpd/zydt/200808/t20080805_65534.shtml> (last visited November 18, 2012).


1051 WEIBING XIAO, FREEDOM OF INFORMATION REFORM IN CHINA: INFORMATION FLOW ANALYSIS 102-03 (2011).

such as OGI annual reports and normative documents do not have proactive publication. For instance, despite persistent efforts to search on the Internet, governmental websites, and Chinese legal databases, locating 2008 OGI annual reports for provincial people’s governments in Ningxia, Guizhou and Hebei is impossible, and the same is true for reports for some ministerial-level agencies including State Administration for Religious Affairs, Government Offices Administration of the State Council and National Bureau of Corruption Prevention. In 2011, journalists, researchers, and interested citizens vainly attempted to uncover Implementation Rules of the Ministry of Railways on Open Government Information, a document that should have had proactive disclosure.1053

These flagrant violations of OGI Regulations in terms of proactive disclosure of standard official information are isolated cases in China and becoming less and less common over time. What deserve serious attention are the prevalent problems, of varying degrees, at various levels of government.

First, as the primary and foremost platform for proactively distributing information, governmental websites need improvement in order to render them more efficient and user-friendly. A nationwide survey conducted by the Chinese Academy of Social Sciences (CASS) in late 2009, regarding official websites of 43 larger cities, found that “more than

half” of cities’ websites surveyed are substandard. A similar CASS survey in 2010 included 59 ministries and commissions under the State Council. In June 2012, a similar random survey of official websites revealed that the quality of governmental websites improved over the previous three years; however, problems persist. For example, many websites run slowly; many OGI columns are either undickable or unsearchable; OGI information is too scattered on websites; contact information, such as telephone numbers and email addresses are incorrect or outdated; many OGI inquires via telephone or email receive no responses in a timely manner or go unanswered; updates to released information are not timely. The National Library of China launched a coordinated platform govinfo.nlc.gov.cn on which users can search for official information of official agencies, nationwide. However, the platform seems unreliable and hardly user-friendly; access to website remained unfruitful despite repeated logon efforts.


1055 Yanbin Lv, Review Third Anniversary of Implementation of OGI Regulations [政府信息公开条例实施三周年检讨], 5 CHINA REFORM (2011).

1056 A few official websites remained in a dormant state for several months and even up to two years. Yanbin Lv, Review Third Anniversary of Implementation of OGI Regulations [政府信息公开条例实施三周年检讨], 5 CHINA REFORM (2011).

Second, county-level governmental bodies are weakest for opening official information for public inspection. The reasons for the poor performance of county-level administrative agencies for proactive disclosure are fivefold: China’s OGI work is basically policy-driven, but counties are where party and governmental policies have their weakest impact; counties usually do not have scholars and media organizations who often play a positive role in promoting governmental transparency; county residents have a desire to know official information but are unaware of the right to know; many county governments believe that releasing information of public emergencies or major incidents are likely to generate more severe incidents; many county-level governmental leaders, coming from other localities and having limited residence, have difficulty communicating with local residents.\(^{1058}\)

Third, proactive disclosure of crisis information or negative activities of official agencies continue to encounter many obstacles. Although large amounts of crisis information have had proactive release since May 2008, as evidenced by previous discussion, the release of negative information remains without guarantee. Concealment of negative information is very likely if responsible agencies have reputations for maintaining secrets, as exemplified by the Wenzhou train collision in Zhejiang Province;\(^{1059}\) if involved


\(^{1059}\) The Ministry of Railways has consistently ranked among the least transparent central agencies. Thus, understanding criticism of its handling of the Wenzhou train collision as a public relations disaster is not difficult. On July 23, 2011, two high-speed trains collided in the suburbs of Wenzhou, Zhejiang Province, killing 40 people and injuring 192. The alleged

\textsuperscript{1060}Sanlu, based in the city of Shijiazhuang, Hebei Province, was China's number one diary company. In September 2008, findings showed adulteration of Sanlu's infant formula with the industrial chemical melamine. The company was one of the major sources of revenue for the city government; thus understanding the city government's collusion with the company to conceal the milk contamination scandal is not difficult. The one-month-long concealment led to catastrophic consequences. The tainted milk powder continued to be sold. China reported an estimated 300,000 victims. Six infants died from kidney failure and thousands of babies hospitalized. People involved paid huge prices for non-disclosure of the scandal. The company announced bankruptcy. The company's former chairwoman received a sentence of life imprisonment. Thirty-two officials received punishment for mismanagement of the scandal. Lei Li, \textit{Changing Functions of Local Governments and Lessons from Sanlu Tainted Milk Scandal} [地方政府职能转变与三鹿奶粉事件的教训], Sina.com.cn, January 12, 2009, <http://finance.sina.com.cn/china/hgjj/20090112/17335750186.shtml> (last visited November 18, 2012); Duan Wang, \textit{Tainted Milk Victims Take Fight to Hong Kong}, \textit{CAIXIN}, May 6, 2010, <http://english.caixin.com/2010-05-06/100141643.html> (last visited November 18, 2012); Shijiazhuang City Government Spokesperson: We Have Undeniable Responsibility for Sanlu Milk Contamination Incident [石家庄政府新闻发言人：三鹿奶粉事件我们有不可推卸的责任], China Central Television, September 30, 2008, <http://news.cctv.com/xwlb/20080930/101980.shtml> (last visited November 18, 2012).

\textsuperscript{1061}Chongqing city's government and the central government's proactive disclosure of information of the Wang Lijun incident have gained wide criticism for inadequacy. The
as represented by the jailing of Xiaobo Liu, Weiwei Ai, and Guangcheng Chen.\textsuperscript{1062} Wide reports claim that authorities hire armies of Internet policemen to “amend or delete secretive approach is understandable because of the level of officials involved and the political sensitivity of the subject. On February 6, 2012, Wang Lijun, former director of Chongqing Public Security Bureau and then-vice mayor of Chongqing, fled to the nearby United States Consulate in Chengdu in an attempt to seek refuge from his supervisor, Bo Xilai, the Chongqing party secretary and the member of China’s powerful Politburo. Wang stayed in the Consulate for one day and transported to Beijing for investigation. Both Bo and Wang were removed from their posts. In August 2012, Bo’s wife was given suspended death sentence for the murder of a British businessman. Wang was convicted with defection, abuse of power and bribe-taking. Bo was expelled from the party and parliament and is waiting for prosecution. The Wang Lijun incident is the most serious political scandal for the party and the government since the 1989 Tiananmen Square incident. Given the sensitivity of the incident, relevant agencies have released little information. Some agencies spread rumors to hide the truth. For example, on February 8, 2012, the Chongqing municipal government announced on its official weibo that Wang was receiving “vacation-style medical treatment.” Lack of official information leads to spreading wild rumors on the Internet. Some rumors alleged sounds of gunshots in Beijing and military vehicles on the streets of the capital. Allegations of a coup d’état led by Bo and Zhou Yongkang, Bo’s strongest supporter in the Politburo Standing Committee, proved to be false. \textit{Chongqing Vice Mayor Wang Lijun Is Receiving Vacation-Style Treatment} [重庆市副市长王立军正接受休假式治疗], XINHUA NEWS AGENCY, February 8, 2012, \begin{url}
http://news.xinhuanet.com/local/2012-02/08/c_122672681.htm
\end{url} (last visited November 18, 2012); \textit{A Collection of Media Reports on the Wang Lijun Incident} [媒体报道王立军薄熙来事件始末], 21Cn.com, May 22, 2012, \begin{url}
http://news.21cn.com/today/topic/2012/05/22/11937242.shtml
\end{url} (last visited November 18, 2012); \textit{Control on Rumors Is Weak, Weibo Comments Suspended} [谣言管控不力 微博暂停评论], Institute of Internet Word of Mouth Research, the Communication University of China, Beijing, April 9, 2012, \begin{url}
\end{url} (last visited November 18, 2012); \textit{China’s Bo Xilai Implicated in Wife’s Crime - State Media}, BBC, September 19, 2012, \begin{url}
http://www.bbc.co.uk/news/world-asia-china-19645314
\end{url} (last visited November 18, 2012).

\textsuperscript{1062} Xiaobo Liu, detained in 2008 and arrested in 2009, was the result of reported association with the Charter 08 manifesto, a document calling for the realization of constitutional democracy in China. Liu, tried on the charges of inciting subversion of state power, received a sentence of 11 years’ imprisonment. He was awarded the 2010 Nobel Peace Prize. Chinese contemporary artist, Weiwei Ai, known for vocal criticism of the Chinese government was detained in April 2011 for allegations of economic crimes (tax evasions). Ai was released on bail two months later and the bail was lifted in June 2012.
content considered unproductive of "harmony."” Hired “50-cent bloggers” create online content favorable toward party and official policies. These examples illustrate Chinese limits to proactive disclosure.

**The Implementation of Reactive Disclosure in China**

Since institution of OGI Regulations in May 2008, citizens, legal persons, and other organizations throughout the country have begun to exercise the legal right of access to government-held information via submitting OGI requests. The interest in applying for governmental information via reactive disclosure provisions of the law was generally high. For example, within the first two months after OGI Regulations went into effect, the Beijing municipal government received 520 information requests. In 2008, Jilin Province

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Blind from an early age and self-taught in law, Guangcheng Chen’s well-known moniker is “barefoot lawyer” who exposes alleged abuses in official family-planning policy in Chinese rural areas. In 2006, Chen was sentenced to four years and three months in prison. After serving his full sentence, and upon release in 2010, he remained under house arrest. On April 22, 2012, Chen escaped his house arrest and fled to the U.S. Embassy in Beijing. After negotiations with the Chinese government, the U.S. government granted Chen a visa, allowing him to be a visiting scholar at the New York University. The Chinese government has released very little information regarding the cases involving Liu, Ai and Chen. Most state-run media organizations shy from covering them.

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received 45,992 OGI filings.\textsuperscript{1066} People and organizations were not hesitant to seek 
administrative and judicial relief upon denial of OGI requests. For instance, in 2008, the 
superior administrative agencies in Shanghai received requests for reconsideration of 683 
denied inquiries, and 258 denied OGI requests seeking judicial relief came before court in 
the same city. In the same year, 118 OGI requests, rejected by agencies in Jilin Province, 
transferred to superior administrative agencies for reconsideration, and 34 similarly 
rejected requests sought judicial relief.\textsuperscript{1067}

The remaining part of this chapter will examine various levels of the Chinese 
governmental agencies’ processing OGI requests, administrative reconsideration agencies’ 
and courts’ handling OGI complaints, and patterns and trends emerging from decisions or 
non-decisions.

*Governmental Agencies Processing OGI Requests*

According to the data gathered (see Tables from 7-1 to 7-17), the ministries, 
commissions, and other organizations under the State Council received approximately 
4,830 OGI requests in 2008, collected 9,884 requests in 2009, acknowledged 10,078 
requests in 2010, and obtained 10,964 requests in 2011, all of which register a steady 
growth in the number of OGI requests. During the same period, agencies at provincial, 
prefecture, city, county, and township levels received approximately 132,266 requests in 
2008, 393,716 applications in 2009, 219,162 requests in 2010, 215,569 OGI submissions in

\textsuperscript{1066} Huazhou Han, *Some Problems and Policy Suggestions Concerning the Implementation of OGI Regulations*, 7 Chinese Public Administration 11, 11-14 (2009).

\textsuperscript{1067} Huazhou Han, *Some Problems and Policy Suggestions Concerning the Implementation of OGI Regulations*, 7 Chinese Public Administration 11, 11-14 (2009).
2011, testament to a dramatic increase in 2009 and a sharp decline in 2010 in the number of OGI requests. In sum, the Chinese government at all levels received 996,469 applications for OGI information within the four years since institution of OGI Regulations. Major findings concerning agencies processing OGI requests are:

1. **Not All Received Requests WereAccepted**

   Apparently, most OGI requests received in China gained acceptance. Some requests remained unprocessed, either ignored by the receiving agencies or marked as invalid applications for procedural reasons (e.g., the request format was inappropriate, addressed the incorrect agency). According to the data, central governmental agencies received 35,756 OGI requests from 2008 to 2011. Among all requests received, 35,588 gained acceptance for processing, an acceptance rate of 99.53 percent. In the same four-year period, provincial and lower level agencies received a total of 960,713 OGI requests, among which 938,674 were acceptable as valid applications, with an acceptance rate of 97.71 percent. Under OGI Regulations, official agencies are to accept and process all requests, so, ideally the acceptance rate should be 100 percent. This requirement is clearly not enforced to the extent desired by the law, and thus ignoring or rejecting OGI requests before acceptance is disturbing. Fangping Li, a Beijing lawyer known for dealing with sensitive or controversial criminal and civil cases, suffered such a setback in his 2010 OGI application.1068

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1068 In March 2010, an immunization scandal surfaced in Shanxi Province where nearly 100 children died or suffered paralysis due to alleged tainted vaccines. On March 19, 2010, Li filed an OGI request to the Shanxi Provincial Health Department for information concerning the immunization scandal. The lawyer required the agency to disclose the following information: the agency’s awareness of the vaccine’s exposure to high temperature, which is harmful to vaccines; approval process for vaccines in Shanxi by the Shanxi Provincial Center for Disease Control and Prevention, who constituted the scandal investigation team,
2. Majority of OGI Requests Submitted to Provincial and Local Agencies Gain Approval

Irritation is the result upon rejection of OGI requests even before acceptance for processing, but the procedures of the lengthy OGI request-submission and relief-seeking process are surprisingly encouraging. The data show that the majority of OGI requests accepted at provincial and local levels in China gain approval by corresponding agencies while approval rate for OGI requests at the central level is much lower. According to gathered statistics, 8.19 percent, 15.72 percent, 5.29 percent and 6.45 percent of the OGI requests submitted in 2008, 2009, 2010 and 2011, respectively, to ministries, commissions and other organizations of the State Council gained acceptance, registering an average approval rate of 8.93 percent. On the contrary, the approval rate for the OGI requests submitted to provincial and local agencies was 63 percent for 2008, 64.44 percent for 2009, 63.49 percent for 2010, and 64.94 percent for 2011, with an average approval rate of 64 percent. In sum, the Chinese bureaucracy at all levels approved 62.12 percent of OGI requests in the four-year period from 2008 to 2011.

Importantly, the approval rate for OGI requests submitted to provincial and local official agencies could be much higher, because most corresponding agencies provided in OGI annual reports for the number of OGI requests accepted, but many failed to provide the number of OGI applications approved. This situation creates accuracy problems in and procedures for the probe. Li found one of his information requests virtually ignored by governmental agencies involved, but continues to wait for a response. Keqing Wang, *Nearly One Hundred Children Died or Paralyzed As a Result of Allegedly Tainted Vaccination in Shanxi Province* [山西近百名儿童疑因注射问题疫苗致死致残], *China Economic Times*, March 17, 2010, <http://news.sina.com.cn/c/sd/2010-03-17/060419879130.shtml> (last visited November 18, 2012); Junxiu Wang, *Lawyer Requests Shanxi Provincial Government to Release Information Concerning Vaccine Problems* [律师向山西递交申请 要求公开问题疫苗信息], *China Youth Daily*, March 20, 2010, <http://news.sina.com.cn/c/2010-03-20/065919903515.shtml> (last visited November 18, 2012).
calculation. Many approved cases, appropriately added to the corresponding total, did not have consideration. Taking this into account, an easy conclusion is that the percentage of OGI requests approved by provincial and local governmental bodies was high.

The high approval rate for OGI requests at provincial and local levels is significant for official attention because the majority of OGI applications submitted, received, and accepted for processing were for provincial and local agencies. The rate reflects effectiveness of the newly established access regimen and contradicts Western scholars’ prophecies that the FOI system fails in authoritarian regimes like China.

However, caution is necessary when considering the common occurrence of agencies’ consenting to applicants’ disclosure requests for three reasons: First, the approval rates are based upon calculations from annual work reports produced by agencies with vested interest in OGI activities, not from independent sources. Second, the rates represent a relatively short period of time (2008-2011). A different outcome would be possible if the data represented a much longer period. Third, most of the information sought did not involve public interest. Instead, requested documents and records closely related to immediate interests of requesters. FOI scholar, Weiping Xiao, identified several major categories for information Chinese citizens sought via OGI requests since 2008: state-owned enterprises’ privatization and restructuring, house demolition, and land use, all of which aids determining violations of individuals’ interests.\textsuperscript{1069} According to Xiao, other areas for inquiries include: pending criminal and civil cases and other personal legal matters, official agencies’ processing business transactions, historical records for matters,
such as housing takeovers prior to and during the Cultural Revolution, and personnel files for claiming government-funded benefits.\textsuperscript{1070} When releasing these types of information, governmental officials have few concerns for any impact on careers. The approval rate would precipitately drop if most information sought involved the welfare or wellbeing of the public.

3. \textbf{Sharply Uneven Approval Rates among Governmental Agencies}

As identified in previous discussion, the average percentage of OGI requests approved by central governmental agencies (8.93 percent) is lower than the average percentage of requests approved by agencies at provincial and lower levels (64 percent), with Beijing and Shanghai being two exceptions. This finding is consistent with a previous study based on 245 annual OGI activity reports from 2008 to 2010.\textsuperscript{1071} The difference in approval ratings between central and local agencies may have explanation from the perspective of the special needs test.

Under \textit{OGI Regulations}, the applicant must provide evidence to prove existence of a special need for daily productivity, livelihood, or scientific research to substantiate the request.\textsuperscript{1072} Normally, the information sought via OGI requests submitted to provincial and lower level official agencies related more closely to citizens’ daily productivity and livelihoods than information pursued via OGI requests to central level agencies.


\textsuperscript{1072} OGI Regulations 2007. Art. 13.
Information requests made to provincial and lower level governmental bodies are thus more likely to satisfy the special needs test. Ironically enough, official agencies at various levels in Beijing and Shanghai are more likely to deny disclosure requests than their counterparts of other provincial-levels because, on average, information sought in these two large cities has greater difficulty meeting the special needs test. In socially and economically developed areas, like Beijing and Shanghai, where a mature civil society exists, people are more likely to apply for information impacting the public interest.\footnote{Ming Xiao, \textit{Analysis of State of Operation of OGI System According to 245 Annual OGI Work Reports from 2008 to 2010} [政府信息公开制度运行状态考察：基于2008年至2010年245份政府信息公开工作年度报告], \textit{10 Law Science Monthly} (2011).}

4. Requests Denied on Non-Legal Grounds

Although the majority of OGI applications submitted from 2008 to 2011 to provincial and lower level agencies gained approval in China, a small number of requests were denied by agencies either on substantive/legal grounds\footnote{This study identifies denied OGI requests as “denied on legal grounds” in the tables when agencies’ decisions assert: a) state secrets; b) commercial secrets; c) personal privacy; d) commercial secrets or personal privacy and a third party’s lack of consent for disclosure; e) harm to state security, public security, economic security or social stability; f) appearance in internal documents; g) irrelevant to applicant’s special needs; h) other legally specified laws and regulations.} or on non-legal/procedural grounds.\footnote{This study identifies denied OGI request as “denied on non-legal grounds” in the tables when agencies’ decisions assert: a) official information does not exist; b) requested agencies do not have the information; c) request ambiguity or failure to conform to required request format; d) non-governmental information; e) transfer of information to archival institutions; f) repeated requests, and g) any other non-legal reasons.} According to gathered data, at the central government’s level, the total number of OGI denials on non-legal grounds was 101 in 2008, 837 in 2009, 665 in 2010, and 1,006 in 2011. At the provincial and lower levels, the number of OGI requests rejected for non-legal reasons was 6,741 in 2008, 14,368 in 2009, 15,463 in 2010, and
22,363 in 2011. In sum, the people's government at all levels rejected a total of 61,544 OGI requests for non-legal reasons in the last four years. The numbers listed indicate a steady growth of OGI rejections for non-legal reasons.

Agencies designed a variety of non-legal strategies to reject OGI requests. Since rejections were for non-legal reasons, the requirements of OGI Regulations allow bypassing. For example, as FOI scholar, Weibing Xiao, observed, official bodies set many unreasonable obstacles for access.\textsuperscript{1076} Some agencies required the applicants to provide file numbers of the documents sought.\textsuperscript{1077} Some administrative organs required requesters to use government-provided application forms.\textsuperscript{1078} Some agencies required personal signatures on application forms.\textsuperscript{1079} Some asked the applicants to submit copies of identifying documents in certain formats and even verification of the authenticity of those documents.


\textsuperscript{1078} In May 2008, Beijing lawyer, Jinsong Hao, submitted an OGI request to the State Forestry Administration in Beijing. The administration rejected the application because he did not use the form designed by the agency. Kulei An, \textit{Skills of Jinsong Hao} [郝劲松的技术活], 20 SOUTHERN PEOPLE WEEKLY 64 (2008), republished by \textit{Southern Weekend}, July 21, 2008, <http://www.infzm.com/content/14824> (last visited November 18, 2012).

\textsuperscript{1079} Yanbin Lv, \textit{Review Third Anniversary of Implementation of OGI Regulations} [政府信息公开条例实施三周年检讨], 5 CHINA REFORM (2011).
Some agencies prohibited OGI requesters from photocopying the document sought. Some agencies prohibited applicants from submitting applications online.

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Yanbin Lv, *Review Third Anniversary of Implementation of OGI Regulations* [政府信息公开条例实施三周年检讨]. *China Reform* (2011). In December 2011, a journalist from the *Southern Metropolis Daily* submitted an OGI application to the Hubei Provincial Bureau of Environmental Protection for surveillance data concerning PM2.5, a term for particles less than 2.5 micrometers in diameter found in the air. PM2.5 can lodge deeply into the lungs because of their small size, thereby posing the greatest health risk among all kinds of particles in the air. The agency required a scanned copy of the applicant's photo ID by telefax and refused to accept a photo ID having certain formats. Xing Wang, *Experiment of OGI Applications for PM2.5 Data* [公开PM2.5数据的申请试验]. *Southern Metropolis Daily*, January 11, 2012, at AA33,<http://gcontent.oeeee.com/f/fe/ffeed84c7cb1ae7b/Blog/7e7/07d33d.html> (last visited November 18, 2012).

In November 2007, Linxing Xu and Yulai Yuan submitted an OGI request to the Shanghai Municipal Environmental Protection Bureau. The Bureau accepted the request, but informed the applicants that the information sought was only accessible for reading or transcription by hand in the Bureau office. Although this incident occurred before enactment of *OGI Regulations*, similar incidents continued after institution of the law. For example, the editor of the magazine, *Rural Women*, Fuqiang Gao, submitted an OGI request on April 1, 2012 with the Wei County Civil Affairs Bureau in Hebei Province for a list of low-income rural families who receive government's cash assistance on a monthly basis. The agency responded on May 9, 2012 that Gao needed to visit the agency office to examine, personally, the document, but without photocopying it. Junxiu Wang, *Lawyer Discusses Various Strange Phenomena Regarding FOI* [一律师披露政府信息公开之怪现状]. *China Youth Daily*, May 10, 2008, at 3, <http://zqb.cyol.com/content/2008-05/10/content_2175261.htm> (last visited November 18, 2012); Jing Wei, *Journalist Sues Wei County Civil Affairs Bureau in Hebei Province for Non-Compliance of OIG Regulations* [媒体人诉河北蔚县民政局违反《政府信息公开条例》], *China.com.cn*, May 17, 2012, <http://forum.china.com.cn/thread-2120089-1-1.html> (last visited November 18, 2012).

In December 2011, a journalist from the *Southern Metropolis Daily* submitted an online OGI application to the official website of the Shaanxi Provincial Bureau of Environmental Protection for the surveillance data concerning PM2.5, a term for particles less than 2.5 micrometers in diameter and found in the air. Unfortunately, the website declined to accept the electronic application, stating that the applicant must mail a hard copy application form and a photocopy of identification to the agency's office. Xing Wang, *Experiment of OGI Applications for PM2.5 Data* [公开PM2.5数据的申请试验]. *Southern Metropolis Daily*, January 11, 2012, at AA33, <http://gcontent.oeeee.com/f/fe/ffeed84c7cb1ae7b/Blog/7e7/07d33d.html> (last visited November 18, 2012).
Many governmental bodies denied requests for information on the grounds that the information sought does not exist or is not governmental information. Some agencies archived the information sought immediately after receiving information requests. Some administrative organs required applicants to document their special needs for the information sought and promise not to abuse special needs data.

5) Requests Denied on Legal Grounds


1084 WEIBING XIAO, FREEDOM OF INFORMATION REFORM IN CHINA: INFORMATION FLOW ANALYSIS 107 (2011).

1085 In December 2011, a journalist from Southern Metropolis Daily submitted an online OGI application to the Guangdong Provincial Bureau of Environmental Protection for the surveillance data concerning PM2.5, a term for particles less than 2.5 micrometers in diameter found in the air. As a part of the online submission requirements, the agency website asked the applicant to document special needs for the surveillance data. The website also asked the applicant to sign an agreement to use the information “legally and reasonably.” According to the agreement, the applicant must promise that the information obtained apply to special needs only and not for sensationalism. The scope of disclosure of the information obtained could not be willfully expanded and the online submission would not be completed until the applicant signed the agreement. Xing Wang, Experiment of OGI Applications for PM2.5 Data [公开 PM2.5 数据的申请试验], SOUTHERN METROPOLIS DAILY, January 11, 2012, at AA33, <http://gcontent.oeeee.com/f/fe/ffe84c7cb1ae7b/Blog/7e7/07d33d.html> (last visited November 18, 2012).
Many OGI requests receive rejection for legal reasons. According to the gathered data, at the central level of government, the number of OGI denials for legal reasons was 27 in 2008, 51 in 2009, 185 in 2010, and 64 in 2011. At provincial and lower levels, the number of OGI requests rejected for legal reasons was 1,853 in 2008, 2,530 in 2009, 2,470 in 2010, and 4,306 in 2011. In sum, the people’s government, at all levels, rejected a total of 11,486 OGI requests for legal reasons in the last four years. Overall, the numbers listed indicate a steady increase in OGI applications denied by official agencies for reasons specified in relevant laws and regulations.

Official agencies designed a variety of legal strategies to block information access. In enforcing OGI Regulations, agencies have limited the coverage of the law such as excluding the General Office of the State Council from the reactive disclosure obligations,1086 required purpose for access requests,1087 limited the scope of governmental information,1088 and use statutory and non-statutory exemptions to control access.1089

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1087 A survey conducted by the Chinese Academy of Social Sciences in 2010 showed that 48.8 percent of the 48 larger cities and 59.3 percent of the 59 official agencies under the State Council require information requesters to indicate and substantiate the purpose of applications. Failure to specify a purpose resulted in many rejections. Yanbin Lv, Review Third Anniversary of Implementation of OGI Regulations [政府信息公开条例实施三周年检讨], 5 China Reform (2011).
6) OGI Requests Denied More for Non-Legal Reasons

Apparently, although the Chinese government seems less and less willing to reject requests for disclosure of information, a disturbing pattern is emerging for Chinese governmental bodies', at various levels, saying, “No,” to information requesters. Governmental agencies around the world normally base denials to FOI requests on legal grounds. China is clearly an exception.

The tables for this study show that, from 2008 to 2011, Chinese agencies denied most OGI requests, not on substantive or legal grounds, but on non-legal or procedural grounds. According to the data, in 2008, the Chinese government, at all levels rejected 6,842 OGI applications on non-legal grounds. In the same year, it denied 1,880 applications on legal grounds. The more frequent use of non-legal reasons was also present in 2009, accounting for 15,205 OGI applications' rejection for non-legal reasons and 2,581

1088 According to legal scholar, Weibing Xiao, limiting the scope of Chinese governmental information is possible by many methods. First, agencies restrict the scope of information by adopting their own OGI Rules. Second, agencies exclude information involving functions of criminal enforcement or prosecution. Third, agencies narrowed the scope of official information to information generated or obtained after enactment of OGI Regulations. Fourth, agencies interpreted the definition of official information literally. Weibing Xiao, Freedom of Information Reform in China: Information Flow Analysis 106-07 (2011).

1089 One example of non-statutory exemptions is internal working documents. The next chapter examines using internal documents to block requests for access requests and to restrict proactive disclosure. According to legal scholar, Weibing Xiao, agencies have used two broad and vague exemptions delineated in OGI Regulations to refuse access. First, many agencies added an exemption through a deliberative process to their OGI Rules, thus broadening the exemptions found in OGI Regulations. Second, some agencies interpreted the exemption for state secrets broadly to include information barely sensitive. Some agencies interpreted the exemption of trade secrets to include information on governments’ procurement and other contracts to which the government is a party. Governmental bodies also used the privacy exemption to deny releasing information already disclosed. Weibing Xiao, Freedom of Information Reform in China: Information Flow Analysis 108-10 (2011).
applications’ rejection for legal reasons. In 2010 and 2011, the Chinese government denied 16,128 and 23,369 OGI requests, respectively, by citing non-legal reasons whereas it rejected 2,655 and 4,370 applications, respectively, in those two years for legal reasons. Of all the 73,030 OGI requests denied in the last four years by all levels of the Chinese government, 61,544 denials were for non-legal reasons and only 11,486 for legal reasons.

The explanation for the much more frequent use of non-legal or procedural reasons to deny OGI requests arises from the significant discretionary power of governmental agencies to use non-legal reasons to deny applications for access. The lack of clear-cut legal rules contributes to willful determination of whether or not non-legal reasons cited by agencies are valid. The abusive use of non-legal grounds for denying OGI access is troubling. First, many non-legal reasons cited to support non-disclosure are clearly unreasonable. Second, OGI requesters whose rejections had non-legal bases have difficulty pursuing administrative and judicial remedies. Even if the applicants file for administrative reconsideration or institute court action against an agency, the chance of having a decision overturned is slim.¹⁰⁹⁰

**Governmental Agencies Handling Reconsideration of Information Request Denials**

Under *OGI Regulations*, applicants for information have three legal mechanisms to rectify non-disclosure of official information. First, they may report the non-disclosure to a superior agency, supervisory agency or agency in responsible for OGI activities. Second, if denied OGI requests, applicants may appeal decisions to the administrative agencies for

reconsideration. Third, they may file OGI lawsuits to seek judicial remedy.\textsuperscript{1091} This study does not examine enforcement of the first mechanism due to a lack of relevant data.

Cases for OGI administrative reconsideration in China are many. According to the data (see Tables from 7-1 to 7-17), the Chinese government at all levels received 554 OGI appeals for administrative reconsideration in 2008, 1,843 cases in 2009, 1,532 similar cases in 2010, and 2,228 cases in 2011. In total, between May 1, 2008 and December 31, 2011, 6,157 cases applied for administrative reconsideration of an agency's decision for requests for access submitted to all central and local governmental agencies. The increasing numbers of applications for administrative reconsideration for OGI decisions indicate a growing consciousness of legal rights among Chinese citizens.

1) \textbf{Rulings include a small number of cases in favor of disclosure}

The data show that agencies for administrative reconsideration ruled in favor of disclosure only for a small number of OGI cases. Of the 584 cases received in the last four years by agencies for administrative reconsideration at the central level, only 25 cases gained favorable rulings. Likewise, of the 5,573 cases for administrative reconsideration in the last four years at provincial and lower levels, only 426 cases gained favorable rulings for disclosure. In sum, the Chinese agencies for administrative reconsideration at all levels only approved disclosure of information for 7.33 percent of cases they have received in the last four years.

For information requesters, cases winning administrative reconsideration were few. Yaofang Xu and 67 other villagers in Zhejiang Province were among those. The villagers were unhappy with the decisions of the local government to expropriate their land without

\textsuperscript{1091} \textit{OGI Regulations 2007}. Art. 33.
providing appropriate compensation. They lodged an application with the Yuyao municipal government on May 26, 2008, seeking detailed information of the land transfer. The Yuyao government asked the petitioners to provide additional identifying documentation and informed them to bring the case to the local land resources bureau. \[1092\] Disappointed with the official strategy of shifting the responsibility, the villagers appealed to the higher-level, Ningbo municipal government on July 4, 2008 for administrative reconsideration. Three months later, the Ningbo government overruled the original administrative decision. The lower-level Yuyao government received orders to release the requested information within 30 days of the decision. \[1093\] A resident in the city of Tangshan, Hebei Province also used administrative reconsideration to force two agencies to change their original non-disclosure decisions. \[1094\]

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\[1094\] On February 25 and March 1, 2012, the Hebei resident filed an application to Tangshan Land and Resources Bureau and Tangshan Lunan District Development and Reform Bureau for official documents that approved demolition of her house. Both applications did not receive responses within legally designated 15 working days. On March 22 and March 28, 2012, the resident, Lan Xie (pseudonym), petitioned Hebei Province Land and Resources Bureau and Hebei Province Development and Reform Commission for reconsideration. In May 2012, two agencies for administrative reconsideration issued separate decisions, ruling that specific administrative actions of the two local agencies not releasing the information within the legal timeframe were illegal. Hongmei Du, *Two Consecutive Victories in Administrative Reconsideration, House Demolition Documents Finally Released* [行政复议两连胜，拆迁文件终获公开], Bjsheng.com, Beijing, June 1, 2012,
2) **Most Rulings or Determinations Favored Non-Disclosure**

According to the data, agencies for administrative reconsideration in China upheld most original administrative decisions. Of the 584 and 5,573 OGI cases received in the last four years by agencies for administrative reconsideration, at the central level and local levels, 34.76 percent and 45.08 percent, respectively, resulted in ruling favoring non-disclosure. In sum, the Chinese agencies for administrative reconsideration at all levels rejected disclosure of information for 44.10 percent of cases they received in the last four years.

In addition to rejecting requests for access in the rulings, agencies for administrative reconsideration in China used other strategies to create de facto denials of disclosure. Of the 6,157 cases for reconsideration at various levels received in the last four-year period, 2,991 cases received no final rulings, many of which resulted in de facto denials of disclosure. Shuhuai Chen, in the city of Shenzhen, Guangdong Province, faced de facto denial of disclosure when he challenged an original administrative decision via administrative reconsideration. The Guangdong Province Land and Resources Bureau


1095 Denials of disclosure listed in the table were de facto as long as administrative reconsideration agencies did not rule formally, but the situations fell into the categories of: a) the requester’s complaint was received but not accepted; b) the case was not closed for an extended period of time; c) the case was closed but the ruling from the agency for reconsideration is not available. According to *Administrative Reconsideration Law 1999*, officials responsible for cases of administrative reconsideration incur administrative penalties if they fail to make decisions in the legally designated time frame and if they fail to give justifiable reasons for not considering and dismissing cases. However, despite existence of the law, delayed decisions are many. The same is true for rejection of cases and dismissal complaints without sufficient reasons.
rejected Chen’s request for information concerning a project to create farmland. He received no response from the Ministry of Land and Resources after reporting the denial and requesting administrative reconsideration.

3) Ineffectiveness of Administrative Reconsideration for Rectifying Non-Disclosure

The above analysis substantiates the international consensus that administrative reconsideration is not effective for rectifying agencies’ non-compliance with legal requirements for reactive disclosure. As FOI scholars, David Banisar and Rick Snell, observed, administrative reconsideration as an internal review mechanism in the FOI legislation “tends to uphold the [FOI] denials and is used more by departments for delaying releases than enhancing access.” Around the world, internal review upholds more than 75 percent of original decisions. China clearly has even higher rates in this regard.

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The global trend that administrative review is becoming increasingly ineffective for rectifying FOI non-disclosure is not difficult to comprehend. Both governmental agencies making initial decisions and the corresponding superior agencies making decisions for reconsideration are components of the bureaucracy. Neither can always resist the natural tendency to withhold information. In addition, officeholders normally do not wish to embarrass their bureaucratic colleagues. Accordingly, when handling FOI complaints, expecting agencies for administrative reconsideration to truly act with independent oversight, such as information commissions or ombudsman widely adopted in many FOI countries, is unrealistic.

However, notably, Chinese leaders are aware of the problems and are attempting to improve effectiveness of administrative reconsideration. In September 2008, the State Council began a pilot project for developing committees for administrative reconsideration in eight provinces and special municipalities to process applications. Consisting of experts, scholars, and governmental officials, the expectation is that committees establish “a more centralized, professional and impartial administrative reconsideration mechanism.” As of 2011, 19 provinces established committees for administrative reconsideration. Apparently, at the present stage, those pilot committees only handle

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significant, complex, and confusing cases covering a wide range of areas including cases for requests to access information. Evaluating the effectiveness of committees’ handling OGI complaints is beyond the scope of this research.

Courts Handling OGI Litigations

Under OGI Regulations, applicants for information may bring governmental agencies to court for judicial relief when denied request according to OGI. OGI litigations in China are many. According to the data (see Tables from 7-1 to 7-17), Chinese courts throughout the country received a total of 305 OGI cases in 2008, 573 OGI cases in 2009, 1,025 OGI cases in 2010, and 1,532 OGI cases in 2011, signifying a steady growth in the number of OGI lawsuits filed in the last four years. In sum, between May 1, 2008 and December 31, 2011, Chinese courts received a total of 3,435 OGI complaints filed by requesters for judicial review. The increasing OGI litigations reflect a growing consciousness of legal rights among Chinese citizens.

1) A Small Number of Cases Granted Access to Information

The data show that Chinese courts ruled in favor of complainants only in a few OGI cases. Of 3,435 OGI cases filed with Chinese courts in the last four years, only 127 gained rulings in favor of disclosure, with a rate of 3.69 percent disclosure-friendly cases.

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Specifically, in 2008, for the entire country, 305 OGI cases gained judicial review, and none ended with plaintiffs prevailing; of the 573 OGI cases in court in 2009 throughout the country, 1.92 percent ended in favor of plaintiffs; for all of China, 1,025 OGI cases had judicial review in 2010 with 3.41 percent favoring plaintiffs and in 2011, 1,532 OGI cases heard by courts resulted in only 5.29 percent having finding that favored plaintiffs.

The chance of prevailing in OGI litigations was so slim for information requesters that achieving judges’ support in OGI complaints became a matter of luck. Hunan resident, Yan Li, was fortunate because he defeated the government in court for the defendant’s failure to respond in time to the plaintiff’s OGI request. The legal victory of Hubei resident, Jian’guo Xu, was far more significant. In October 2008, just five months after OGI Regulations became effective, Xu defeated a powerful governmental agency in an OGI lawsuit in a local court, indicating progressive potential for the court system in China to become more independent. This lawsuit is the first in the country’s history in which an OGI case had public airing through regular court procedures and in which the plaintiff prevailed. Another fortunate petitioner was the Shitou Dyestuff Company, a dye-making

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1104 In February 2010, Yan Li filed an OGI request to the Jiyuan Municipal Bureau of Housing and Urban-Rural Construction for official documents that approved certain construction projects. The Bureau accepted the request on March 12, 2010, but the agency did not respond by May 18, 2010. Li brought the agency to court. The Jiyuan Municipal Court accepted his complaint and ruled, on July 26, 2010, in favor of the plaintiff, holding that the defendant failed to respond to the request within 15 working days after receiving the request, a requirement of Article 24 of OGI Regulations. The case was cited from Beida fabao [vip.chinalawinfo.com].

1105 On May 1, 2008, Xu lodged an OGI application with the Huangzhou District Transportation Bureau in the city of Huanggang for regulating information concerning motorcycles. The agency did not respond to the request after 15 business days. Xu sued the agency for failing to comply with OGI Regulations. On October 7, 2008, the Huangzhou District Court ruled in favor of Xu, holding that the information sought was improperly withheld. The Court ordered the requested information released and required the
corporation in Shanghai. Among the 400 OGI complaints filed from 2004 to 2008 in Shanghai, this company's litigation was the only one in which the plaintiff prevailed. Kai Li was more fortunate than the previous three plaintiffs. He won the litigation despite the fact that the information sought did not originate with the governmental agency.

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The Shanghai OGI Provision became enforceable in 2004.


Kai Li, a student at Chengdu Institute Sichuan International Studies University (SISU), filed an OGI request on December 4, 2008 to the Sichuan Provincial Bureau of Education for information of the agency's investigation of alleged torture and mistreatment of Li by his classmates. On December 23, 2008, the agency replied that the information sought was non-governmental because it did not originate with nor obtainable by, the agency. Li reported the case to the Sichuan provincial people's government for administrative reconsideration. After reconsideration, the agency upheld the original decision. In April 2009, Li sued the Bureau of Education in the Chengdu Qingyang District Court, which later ruled in favor of the defendant. Li appealed the ruling to the Chengdu Intermediate Court. On October 26, 2009, the appellate court overturned the local court's ruling held that the agency obtained a document from SISU during the course of its investigation of the alleged
2) Majority of Lawsuits’ Rulings Denied Access to Information

According to the data, the majority of courts’ rulings in China in the last two years upheld administrative decisions.\textsuperscript{1109} Of 1,025 OGI litigations received by Chinese courts in 2010, 760 lawsuits gained rejection for non-disclosure. Of 1,532 OGI litigations in 2011, Chinese courts rejected 1211 for non-disclosure. In sum, Chinese courts throughout the country ruled against disclosure of information for 64.13 percent of cases they received in the last four years.

3) Some OGI Litigations Resulted in Neither Granting nor Denying Access

The situation for information access becomes worse when considering OGI litigations that neither granted nor denied access. In addition to the judicial rulings, either supporting or denying disclosure, a large amounts of “uncertain situations” remain in which the requester’s complaint did not receive acceptance, or remains in litigation, or the mistreatment of Li and ordered release of the document because OGI Regulations provide that information obtained by the official is subject to disclosure. The case was cited from Beida fabao [vip.chinalawinfo.com].

\textsuperscript{1109} Of 305 OGI litigations received by Chinese courts in 2008, 8 cases’ rulings favored non-disclosure. Of 573 OGI litigations received in 2009, Chinese courts rejected 224 for non-disclosure. This indicates the rates of denying disclosure in 2008 and 2009 were not too high, but clearly, many OGI lawsuits in these two years ended with no rulings but de facto denials of disclosure. Shanghai is a good example exemplifying the low victory rate for plaintiffs in OGI litigations from 2004 to 2008. Shanghai is one of the most economically developed cities in China and is at the forefront of official transparency laws in the country. Shanghai OGI Provisions became effective in 2004, thus making Shanghai Municipal Government the first provincial-level government in China to embrace freedom of information legislation. From 2004 to 2008, courts in Shanghai received nearly 400 OGI cases. Only one plaintiff prevailed, 13 plaintiffs withdrew their lawsuits, and all the other plaintiffs overwhelmingly lost their OGI cases. Jian Bao, Shanghai Leads China: 400 OGI Litigations Filed within Four Years [上海:四年 400 起政府信息公开“民告官”居全国首位], PEOPLE’S DAILY, November 12, 2008, \textless \url{http://politics.people.com.cn/GB/8323788.html} \textgreater (last visited November 18, 2012).
closed case did not appear in OGI annual reports with details of the ruling. Many of these “uncertain situations” involve de facto denials of access to information.

For example, the fact of non-acceptance of plaintiffs’ claims often indicates rejection of OGI complains prior to entering the judicial process. Guangyu Li, the deputy director of the administrative tribunal of the Supreme Court, said that more than one third of OGI plaintiffs in China failed to have complaints accepted by courts.\footnote{Junxiu Wang & Pengjie Zhang, \\*Deputy Director of Supreme Court Administrative Tribunal: Half of OGI Lawsuits Either Rejected Or Dismissed* [高院副庭长：半数信息公开诉讼案被法院拒之门外], \textit{China Youth Daily}, November 28, 2011, <http://www.legaldaily.com.cn/index_article/content/2011-11/28/content_3129097.htm?node=5955> (last visited November 18, 2012).}

According to the data, within the last four years, 32 litigations of legal disputes regarding OGI requests submitted to central governmental agencies could have categorization as “other” or “uncertain situations,” constituting 94.12 percent of total filings against central agencies. Likewise, within the same period, 1,073 litigations of legal disputes regarding OGI requests submitted to provincial and lower level agencies populate the category of “other” or “uncertain situations,” constituting 31.55 percent of total litigations filed against local agencies. In sum, in the last four years, Chinese courts ruled either in favor of, or against, the plaintiffs in 2,330 OGI litigations and no rulings occurred for 1,105 lawsuits categorized as “uncertain situations.” In other words, 32.17 percent of OGI litigations neither granted nor denied access. Among them, many constitute de facto denials for disclosure.

4) Information Access Denied for Substantive and Procedural Reasons
Similar to official agencies, courts in China rejected disclosure of information for both substantive and procedural reasons. The substantive reasons often cited by courts for denial were that the information sought concerns state secrets, commercial secrets, personal privacy, or endangerment of state security, public security, economic security, and social stability, thereby exempting the information from disclosure.\(^{1111}\) As legal scholar, Weibing Xiao, argued, courts used strategies of limiting the scope of administrative lawsuits,\(^{1112}\) imposing unreasonable burden of proof on plaintiffs,\(^{1113}\) and rejecting OGI lawsuits on the grounds that the requester has no legal interest in the information.\(^{1114}\)

\(^{1111}\) The exemption for commercial secrets is often the basis for denying access to information. On August 7, 2008, the Shanghai Municipal Bureau of Industry and Commerce received an OGI request from Yousheng Lu for information to register a local enterprise that had transferred ownership. The agency rejected the request, arguing that the information sought was a commercial secret of the enterprise and the enterprise did not consent to disclosure of the information. Lu reported the case to the State Administration for Industry and Commerce for administrative reconsideration. The Administration upheld the original decision. Lu sued the agency in a local court. The court ruled in favor of the agency. Lu appealed the ruling to the Shanghai First Intermediate Court. On March 16, 2009, the Court upheld the local court’s ruling, asserting that the information was a third-party’s commercial secret and not subject to disclosure due to the objection of the enterprise as the third party. The exemption of social stability is also the basis for denying access. On August 22, 2008, Bingting Wang lodged an OGI application with the Shanghai Hongkou District people’s government for information concerning house demolitions and urban renewal. On August 25, the agency decided to withhold the information. The agency stated that disclosure of the document could endanger state security, economic security, public security and social stability because the document was procedural and the content was subject to change. Wang brought the agency to court. On May 12, 2009, the Shanghai Second Intermediate Court ruled in favor of the defendant, reasoning that the information sought was a report used to request instructions from a superior agency was procedural in nature and may prejudice social stability once released. The two cases were cited from *Beida fabao* [vip.chinalawinfo.com].

\(^{1112}\) According to Weibing Xiao, limiting the scope of administrative lawsuits employed three avenues: First, courts rejected an OGI lawsuit for the reason that it does not fall within the scope of administrative lawsuits. Second, courts held that an OGI refusal has no real impact on the complainant’s right and duty, and places it outside the scope of administrative cases. Third, courts rejection of an FOI legal action can be on the basis that
As the Judicial Interpretation of OGI Regulations became effective in August 2011, those strategies no longer apply in the Chinese judicial system, since the interpretation either explicitly or implicitly provides that OGI lawsuits are within the scope of administrative lawsuits, OGI refusals are within the scope of administrative cases, information sought is within the scope of administrative lawsuits, requesters have legal interests in the information, and official agencies carry the predominant burden of proof. However, courts retain the ability to rule in favor of officials for other substantive reasons.

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1113 FOI scholar Weibing Xiao said, “Courts have used the ambiguity of burden of proof to dismiss [OGI] legal actions, especially when reviewing [OGI] decisions in which officials claim that the information sought does not exist. Such claims create difficulties for courts, which must decide whether plaintiffs or defendants bear the burden of proof, and to what degree.” WEIBING XIAO, FREEDOM OF INFORMATION REFORM IN CHINA: INFORMATION FLOW ANALYSIS 117 (2011).

1114 According to legal scholar, Weibing Xiao, under the Supreme Court’s explanation of Administrative Litigation Law 1989, individuals, entitled to file an administrative lawsuit, are those who have a legal interest in administrative actions This sets a limit on the qualification of a plaintiff. The Supreme Court’s Explanation on Several Questions Related to Implementation of the Administrative Litigation Law (1989). Art.12. WEIBING XIAO, FREEDOM OF INFORMATION REFORM IN CHINA: INFORMATION FLOW ANALYSIS 117 (2011).


As FOI expert Weibing Xiao observed, courts could literally explain the definition of official information and examine purposes for access requests in order to deny disclosure. Court can also deny access to information on the ground that information sought is internal or procedural. Procedural reasons, often cited by courts, support

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1117 | Weibing Xiao found that Chinese courts could adopt a mechanical interpretation of the definition of governmental information to block access to information. For example, information compiled, rather than generated or acquired by a government agency, is not subject to disclosure; oral information is an exclusion for disclosure; information irrelevant to the exercise of official responsibilities is an exclusion for disclosure. Weibing Xiao, Freedom of Information Reform in China: Information Flow Analysis 116 (2011). The courts did not support the request for access by Shanghai resident Qiuqin Xu because information sought was irrelevant to the exercise of government responsibilities. Xu sent an OGI request to the Shanghai Pudong District Construction and Transportation Commission for information of the use of public funds for house demolition compensation. The agency rejected the request in April 2012. Xu sued the agency for the denial and the Shanghai Pudong District Court ruled in favor of the defendant. Xu appealed. On November 19, 2009, the Shanghai First Intermediate Court upheld the local court’s decision, holding that the information sought was not information obtained by the agency in the process of performing its official responsibilities. The case was cited from Beida fabao [vip.chinalawinfo.com].

1118 | Weibing Xiao argued that Chinese courts used the special purpose test to reject OGI legal actions with the rationale that examining the requester’s purpose in OGI applications could prevent abusive use of rights to access. Weibing Xiao, Freedom of Information Reform in China: Information Flow Analysis 116 (2011).

1119 | Jia Lei sued the Shanghai Jing’an District people’s government for its decision on September 15, 2009 denying release of the legal opinion used to justify the forceful demolition of his house. On June 13, 2010, the Shanghai Second Intermediate Court dismissed the plaintiff’s petition on the grounds that the legal opinion requested was an internal document created by the defendant’s internal organization-the Shanghai Jing’an District Office of Legislative Affairs. The case was cited from Beida fabao [vip.chinalawinfo.com].

1120 | Ronghua Zhang and other Henan residents filed an OGI request with the Zhengzhou Huiji District Human Resources and Social Security Bureau for information of an individual who died from overwork at a security company due to a lack of protection in an employment contract. When the agency denied the request, Zhang sued the agency for non-disclosure on September 14, 2010. On November 13, 2010, the Zhengzhou Huiji District Court ruled in favor of the defendant, holding that procedural information, the disclosure of
judicial decisions in favor of official agencies. For example, as legal scholar, Weibing Xiao observed, Chinese courts rejected OGI lawsuits by claiming that the requester sent a case to an incorrect jurisdiction\textsuperscript{1121} or by postponing acceptance.\textsuperscript{1122} The cases of six law professors,\textsuperscript{1123} five retired workers\textsuperscript{1124} and six villagers in Hunan Province are examples.\textsuperscript{1125} Courts denied requests for access to information using reason that the

which may endanger personal safety and hamper evidence collection, is exempt from disclosure. The case was cited from Beida fabao [vip.chinalawinfo.com].


\textsuperscript{1123} On May 4, 2008, five law professors from Xiangtan University, Hunan Province lodged an OGI application with the Xiangtan Municipal Government and the Xiangtan Municipal Transportation Bureau for information concerning four bridges in the city. Feeling that the government’s response was not satisfactory, the professors sued the Xiangtan Municipal Government. However, the local court was hesitant to accept the case. Wenjie Liu, *Five Law Professors from Hunan’s Xiangtan University Sue Government for Failing to Release Information About Administrative Fees* [湖南湘潭大学五博士状告政府 要求公开收费信息], XINHUA NEWS AGENCY, June 6, 2008, <http://news.xinhuanet.com/legal/2008-06/06/content_8319893.htm> (last visited November 18, 2012).

\textsuperscript{1124} On May 4, 2008, five retired workers sued the Rucheng people’s government for its failure to release information under *OGI Regulations*. This was the first OGI lawsuit filed in China since enactment of *OGI Regulations*. Despite persistent efforts of the requesters to persuade the local court to accept or reject the case in a timely manner, the court did not respond from fear of being first to hear a contentious OGI case in China. With patience exhausted, the five workers sued the Rucheng people’s government in the Hunan Higher People’s Court on June 24, 2008. Wenming Zhao, *First OGI Litigation in China Neither Accepted Nor Dismissed, Several Similar Cases Face Same Embarrassment* [“政府信息公开第一案”至今未立案也未裁定驳回 多起类似案件面临相同尴尬], LEGAL DAILY, June 24, 2008, <http://www.legaldaily.com.cn/bm/content/20080625/content_885817.htm?node=12> (last visited November 18, 2012).

\textsuperscript{1125} On June 3, 2008, Jianqiu Zhang and other five villagers in the county of Chaling sued the Chaling County Finance Bureau for its failure to release information concerning specific amounts of governmental funding allocated to their village for disaster relief, assistance to low-income families and social donations. This was the first Chinese OGI lawsuit filed by
information could not be determined and the plaintiff failed to provide additional materials to specify the information pursued, as exemplified in the case of *Zhang et al. v. Shanghai Bureau of Planning, Land and Resources*\(^{1126}\) and the case of *Wang*.\(^{1127}\) Chinese courts rejected plaintiffs’ petitions simply due to information’s being non-governmental, and the courts did not provide any rationales for the decisions.\(^{1128}\)

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\(^{1126}\) On January 22, 2010, Zhang and 27 others submitted an OGI request to the Shanghai Bureau of Planning, Land and Resources for the official document approving land expropriation in certain areas. The agency responded that the information sought was vague and required additional materials from requesters. Zhang did not send additional materials to the agency; instead, he brought the agency to a local court. The court ruled in favor of the defendant. Zhang appealed the court’s decision to the Shanghai Second Intermediate Court. On August 3, 2010, the Court upheld the local court’s ruling, holding the legality for the governmental agency to seek additional information from the requester if the agency believes that the request is vague or indeterminate. The case was cited from *Beida fabao* [vip.chinalawinfo.com].

\(^{1127}\) On September 22, 2010, Wang filed an OGI application to the Shanghai Municipal Bureau of Human Resources and Social Security for official information of the length of his service as an employee of an organization. The agency informed Wang on October 15, 2010 of a needed extension for time and the response would be available by November 9, 2010. On November 2, 2010, the agency responded that Wang’s working age was 29 years plus 2 months. Wang thought that the working age provided by the agency was incorrect. He sued the agency in a local court to rectify the wrong information. After dismissal of the complaint, Wang appealed the decision to the Shanghai Second Intermediate Court. On March 11, 2011, the Court ruled in favor of the agency, holding that the plaintiff failed to provide the title and file number of the documents sought. The case was cited from *Beida fabao* [vip.chinalawinfo.com].

\(^{1128}\) On January 15, 2010, Bao lodged an application with the Shanghai Yangpu District Bureau of Housing for information of the use of public funds for compensating housing
4) **The Ineffectiveness of Judicial Review in Rectifying Non-Disclosure**

The previous analyses substantiate the international consensus that judicial review is not effective for rectifying non-compliance of official agencies with legal requirements of reactive disclosure according to *OGI Regulations*. As international FOI expert, David Banisar, observed, courts are not the most effective mechanisms to ensure governmental compliance with the FOI laws because judicial systems “have significant negative aspects,” like being too expensive, time consuming, deferential to agencies, and having no expertise with practices of agencies like informational commissions or FOI ombudsmen.\(^{1129}\)

The court system confronts additional obstacles in the Chinese context. Under the current Chinese judicial system, the communist party, the people’s government, the people’s congress, and many influential individuals are capable of exerting significant and undue influence on judges. Given the fear of possible retribution from officials and other influential stakeholders, most courts are unwilling to accept cases involving official information. Retribution can be withholding political appointments or cutting budgets for courts that show too much independence. For these reasons, courts are reluctant to hear demolition and residents’ relocation in the district. After the Bureau rejected his request, Bao sued the agency in the Shanghai Yangpu District Court, which later upheld the original administrative decision. Bao appealed the court’s decision to the Shanghai Second Intermediate Court. On August 9, 2010, the Court upheld the ruling of the local court. In its legal opinion, the Court held that information concerning the use of public funds for housing demolition and resident relocation is not governmental information. The Court did not explain the legal reason. The case was cited from *Beida fabao* [vip.chinalawinfo.com].

OGI cases. Despite accepting those cases, few judges are willing to render decisions unfavorable to official agencies.1130

**Geographic and Bureaucratic Imbalance in the Use of Reactive Disclosure**

Before concluding the analysis on the status of the Chinese regimen for reactive disclosure, a discussion of a somewhat less significant, but still thought-provoking issue is advisable: the geographic and bureaucratic imbalance of reactive disclosure.

The geographic imbalance in terms of the number of OGI requests received by official agencies is astonishing. According to the data (see Tables from 7-1 to 7-17), Jilin Province received the largest number of OGI requests among all provinces and other provincial-level regions from 2008 to 2011, having an average number of 44,799 requests submitted per year. In a sharp contrast, Xinjiang Autonomous Region received the smallest number of OGI requests during the same period, recording an average of 6 requests per year. The geographic imbalance in the number of OGI cases received by both agencies for governmental reconsideration and courts in different localities is equally significant.

According to the data from annual OGI activities’ reports, Shanghai reported the highest number of OGI reconsideration and litigation cases in the last four years, on average, 927 cases filed against agencies. As the second largest provincial entity in terms of the number of OGI reconsideration and litigation cases received in the same four-year period, Beijing had an average of 535 cases filed per year. To the contrary, citizens, legal persons, and other organizations in Xinjiang, Guangxi, and Hainan appear reluctant to seek administrative and judicial remedies to rectify non-compliance with reactive disclosure

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1130 Many Chinese judges refuse to work in the administrative divisions of the courts “because of the politically sensitive nature of the cases.” RANDALL PEERENBOOM, *CHINA’S LONG MARCH TOWARD RULE OF LAW* 399 (2002).
requirements. In the last four years, these provinces and autonomous regions registered not a single OGI cases filed either for administrative remedy or for judicial review.

The bureaucratic imbalance in terms of the number of OGI requests received and OGI reconsideration cases and litigations filed against different levels of governmental agencies is equally startling. According to the data, cabinet-level central agencies received 35,756 OGI requests in the last four years; findings for 584 OGI reconsideration cases and 34 OGI litigations against cabinet-level central governmental agencies under the direct jurisdiction of the State Council occurred in the same period. By comparison, the use of reactive disclosure was more prevalent at the lower levels of the Chinese bureaucratic hierarchy. In the last four years, provincial and lower level governmental agencies received filings for 960,713 OGI applications, 5,573 OGI reconsideration cases, and 3,401 OGI litigations against administrative agencies in provincial to the township levels.

The imbalance shows that, contrary to expectations among officials for abuse or overuse of OGI Regulations in some regions and at some levels of the bureaucracy, use of the law is actually never or superficial. The reasons are at least threefold: First, a lack of understanding of OGI laws among some Chinese citizens forces them to believe that initiating OGI requests, reporting complaints to superior agencies for reconsideration, and suing official agencies for access to information are to be avoided at all cost. Citizens simply do not want to confront powerful officials.\textsuperscript{1131} The low awareness of OGI Regulations and

\textsuperscript{1131} Many Chinese officials are hostile to OGI applicants. Officials often consider the information requester to be someone finding fault with the government. Some officials thus do not like people who request information, file administrative reconsideration complaints, or lawsuits. Yusheng Zhang, Open Government Information Needs Breaking out of Mentality of Opponents [政府信息公开须破“作对”思维], NORTHERN WEEKEND, May 23, 2012, <http://www.northnews.cn/2012/0523/797090.shtml> (last visited November 18, 2012).
reluctance to exercise the right of access among many ordinary citizens contribute to the neglected state of the law in some regions.

Second, the low use of reactive disclosure at the central level is attributable to the fact that the public has much less interest in information made or obtained by central governmental agencies because most of that information has nothing to do with the daily lives and immediate interests of ordinary citizens. Third, contrary to widely-held assumptions among Western scholars that higher levels of socio-economic development promote freedom of information and vice versa, apparently no clear positive correlation exists between per capita income and governmental transparency in China.\textsuperscript{1132} OGI Regulations remain virtually dormant in many wealthy provinces; whereas, in many poor provinces the law has had frequent and vigorous use.\textsuperscript{1133} Beijing, Shanghai, and Xinjiang may be the only three Chinese cases that conform to the previously mentioned correlation.

\textsuperscript{1132} Research conducted by Western scholars found that the financial strength of a city’s government in China determines the quality of the city’s environmental transparency. In explaining the correlation, the scholars observed, “Establishing the institutions to collect, organize, and disseminate information is costly and remains a low priority for cash-strapped local governments.” This finding, however, is clearly incompatible with the results of the current study. Peter Lorentzen, Pierre Landry & John Yasuda, \textit{Transparent Authoritarianism? An Analysis of Political and Economic Barriers to Greater Government Transparency in China}, paper presented at the American Political Science Association annual meeting, Washington, D.C., September 4, 2010.

\textsuperscript{1133} For example, as one of the most developed provinces in China, Guangdong Province received only 199 OGI applications from 2008 to 2011, and received only seven complaints for OGI administrative reconsideration and OGI lawsuits in the same period. Another equally well-off province Jiangsu received only 234 OGI applications and three cases for administrative reconsideration and judicial relief within the last four years. In a sharp contrast, many poorer provinces such as Sichuan and Jilin, recorded more prolific use of OGI Regulations. In the last four years, Sichuan received 28,327 OGI applications and 125 cases for administrative reconsideration and judicial review. In the same four-year period, residents in Jilin submitted 179,196 OGI applications and filed 363 cases for administrative and judicial remedies.
In Beijing and Shanghai, residents are generally wealthier, have stronger interest in exercising their rights to access rights, and governmental agencies enforce proactive and reactive disclosure requirements more vigorously. In Xinjiang, citizens are generally poorer, have weaker interest in OGI Regulations and thus the law has rare use.

The inapplicability of the correlation to the Chinese context could have an explanation from the perspective of political commitment, the degree of which plays a key role in ensuring enforcement of OGI Regulations in China. A poor area could be competent in implementing OGI Regulations if its leaders attached importance. To the contrary, a rich area could poorly ensure compliance of governmental agencies with the law if its major leaders fail to assign a priority for OGI activities. This reflects both the strengths and limitations of the Chinese freedom of information, which is mainly policy-driven and elitist-driven.

**Insufficient Proactive and Reactive Disclosure by Military and National Security Agencies**

Both the Ministry of National Defense and the Ministry of State Security are subject to OGI Regulations. However, both agencies have shown little to no willingness to

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1134 Xixin Wang, director of Peking University Center for Public Participation Studies and Supports, argued that the geographical imbalance in the implementation of OGI Regulations has nothing to do with economic development. Instead, it depends upon local leaders’ truly valuing governmental transparency. Mingyan Wei & Shaofeng Guo, OGI Regulations Still Encounter Implementation Bottlenecks Four Years after Enforcement [信息公开条例实施4年仍遭执行难], BEIJING NEWS, May 15, 2012, <http://www.bjnews.com.cn/news/2012/05/15/199113.html> (last visited November 18, 2012).

1135 Unlike the U.S. Department of Defense and many similar agencies in the world, the Chinese Ministry of National Defense has no power to mobilize and command the armed forces. The power is in the hands of the party.
comply with the proactive and reactive requirements for disclosure in the law. The
Ministry of National Defense created an official website, proactively released certain
kinds of information regarding the Chinese military, and established press secretary
system to deal with Chinese and foreign journalists. This ministry trained an initial
team of military communicators whose jobs include assisting foreign audiences’
understanding of the Chinese military.

However, unlike other administrative agencies, the Ministry of National Defense has
no FOI sections on its official website. The data (see Tables from 7-1 to 7-17) indicates that,
since 2008, the agency has not released any OGI annual activities’ reports; no system exists
to allow requesters to apply for information held by the agency. The Ministry of State
Security is even more secretive, lacks an official website, has released no annual OGI
activities’ reports (see Tables from 7-1 to 7-17), and established no system to disclose
information, proactively and reactively.

Understandably, national defense and state security agencies are more secretive
than other less sensitive official departments. However, this does not imply that these


1137 Jianwen Guan & Tiehu Yang, Ministry of the National Defense Press Secretary: Introduce
Chinese Military to the Whole World [国防部新闻发言人：向世界说明中国军队], PEOPLE’S
18, 2012).

1138 Jie Zheng, Chinese Military Trains Its First Team of Experts in Foreign Publicity [中国军队
2012).
agencies enjoy blanket authority to deny the disclosure of information. Certainly, not all information created or obtained by the Ministry of National Defense and the Ministry of State Security coincides with state secrets. According to law, any national defense and security information, not exempt from OGI Regulations, should have prompt release. Otherwise, no accountability accrues to national defense officers and national security officials. These two agencies need to exert stronger commitment to the Chinese people’s right to know.

**Summary and Conclusion**

This chapter examines the implementation of OGI Regulations in terms of both proactive and reactive disclosure of governmental information in China.

The chapter finds that the Chinese government has proactively disclosed information at a level unseen in Chinese history. Four kinds of official records and files, from less sensitive ones to sensitive ones, have had affirmative dissemination by agencies from central to township levels throughout the country from 2008 to 2011 via a large variety of communication channels such as official websites, press conferences, and facilities for OGI access. Various levels of agencies compiled OGI guides, OGI indexes, and OGI annual activities’ reports that facilitated proactive disclosure of information.

The chapter identifies major problems in enforcement of requirements for proactive disclosure requirements, such as official websites that badly need maintenance and upgrading, county-level administrative organs that need to publicize information in a timely and proactive manner, insufficient dissemination of information involving man-made disasters, and negative activities of agencies and officials.
After exploring strengths and weaknesses of proactive disclosure, this study concludes that, overall, the Chinese government has been successful in enforcing the requirements for proactive disclosure requirements according to OGI Regulations. The study identifies several major reasons for the effectiveness of implementation of proactive disclosure: vast experience agencies obtained from thousands of years of practicing proactive disclosure, strong emphasis of OGI Regulations on proactive disclosure, unswerving political support from officials in party and government; special status of the general offices of various levels of people's governments as central bodies that coordinate and supervise OGI activities, improved awareness of OGI issues and decreased enchantment with governmental secrecy among public employees, pressure from interested citizens, legal professionals and rights activists for rectifying non-compliance with proactive disclosure requirements in China.

As for implementation of requirements for reactive disclosure, this chapter finds that most OGI applications processed by official agencies at various levels have gained approval in the last four years. This is a significant achievement for the Chinese government because OGI Regulations are weak in statutory language for reactive disclosure of information. The successful implementation of requirements for reactive disclosure, however, requires some skepticism because most official information sought from 2008 to 2011 was not public information.

This chapter also identifies several additional major weaknesses in the enforcement of distributing official information upon request. The denial of OGI requests prior to processing is unacceptably frustrating. Approval rates for OGI requests among different official agencies are sharply uneven. The use of administrative and judicial remedies
displays geographic and bureaucratic imbalance. The number of OGI requests denied for non-legal reasons is exceedingly high. Agencies for administrative reconsideration and courts are basically ineffective in correcting agencies’ decisions and ensuring freer flow of information. Both the Ministry of National Defense and the Ministry of State Security are faltering in proactively and reactively releasing information.

Overall, China deserves recognition. Unlike many countries, including democratic ones, such as the United States in which the federal Freedom of Information Act “was weak and rarely used” after initial enactment in 1966,\textsuperscript{1139} China has had prolific use of OGI Regulations in the last four years. The system established for proactive disclosure become routinely deployed for most official agencies. Citizens, legal persons, and other organizations have actively sought official information via filing OGI requests. Most OGI requests gained approval. Huai’de Ma, vice president of China University of Political Science and Law and director of the Institute of Government by Law said, “If let me determine which law has been effectively enforced in China in the last ten years, I would choose OGI Regulations.”\textsuperscript{1140}

It is noteworthy that consideration of the data in the Tables from 7-1 to 7-17 should be cautious due to four reasons. First, all the numbers do not arise from independent sources; instead, the data is from annual reports of OGI activities produced by official

\textsuperscript{1139} Robert Freeman, Thirty Years of FOIL, 11 GOVERNMENT, LAW AND POLICY JOURNAL 4 (Spring 2009).

agencies. The numbers compiled from annual reports of OGI activities of central and provincial-level agencies (2008-2011) indicate that, as examined previously in this chapter, the majority of OGI requests submitted to provincial and local agencies gained approval. The OGI request approval rate provided by research organizations and news media such as the China Academy of Social Science, Peking University, Southern Weekend, and Southern Metropolis Daily seems far lower. Those independent sources obtained the approval rate by sending staff to apply for information under the guise of ordinary requesters. Those rates are likely more reliable. On the contrary, officials at various levels might be tempted to improve their numbers because their performance evaluations relate to OGI activities.

Second, a significant amount of information is not provided by agencies in their OGI annual reports, as indicated by “NA” in the tables. Third, agencies may also make mistakes

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1141 For example, the China Academy of Social Sciences conducted an OGI application experiment in 2010 and found that the OGI request approval rate was 6.7 percent for central agencies and 4.6 percent for local agencies. Peking University Center for Public Participation Studies and Supports has not released any approval rates, but its staff reportedly faced frequent complaints when applying for information from all agencies. Southern Weekend conducted an OGI application experiment in 2010 and found that the approval rate was 41 percent. The Southern Metropolis Daily experiment in 2011 found that the corresponding rate was 5 percent. The approval rate may be even lower if requesters are journalists. Governmental agencies may reject disclosure, claiming that the journalists fail to satisfy the special needs test or argue that the materials sought might be used for sensationalism. Hongqing Duan, How Chinese Media Shall Push Forward Open Government Information [中国媒体如何推进信息公开], 9 CHINA REFORM (2011); Xing Wang, Experiment of OGI Applications for PM2.5 Data [公开 PM2.5 数据的申请试验], SOUTHERN METROPOLIS DAILY, January 11, 2012, at AA33, <http://gcontent.oeeee.com/f/fe/ffeed84c7cb1ae7b/Blog/7e7/07d33d.html> (last visited November 18, 2012); Mingyan Wei & Shaofeng Guo, OGI Regulations Still Encounter Implementation Bottlenecks Four Years after Enforcement [信息公开条例实施 4 年仍遭执行难], BEIJING NEWS, May 15, 2012, <http://www.bjnews.com.cn/news/2012/05/15/199113.html> (last visited November 18, 2012).
in reporting their activities for various reasons. Lastly, interpretation of annual reports of OGI activities may be prone to error due to vagueness in the wording of the materials involved. Despite all the shortcomings of the data presented in Tables from 7-1 to 7-17, the current researcher believes that the data are useable because no other alternative dataset is as comprehensive and longitudinal as the data provided by the Chinese government at various levels. The government data are valuable in that they provide researchers an overview of all Chinese OGI activities occurring at central and local levels from 2008 to 2011, unlike other datasets which at best offer sporadic and anecdotal evidence of OGI use in China.

*OGI Regulations* have many inherent problems in statutory language, as examined in Chapter Six, allowing very limited access to information. Given the law’s inadequate promises, its actual delivery is surprising and encouraging. Of course, problems in implementation of *OGI Regulations* abound. All those problems discussed in this chapter require address by the Chinese government in the years to come. If resolutions to those problems do not have serious vetting, the role of the freedom of information law in eradicating governmental corruption will have significant limits. An examination of

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1142 It was found that the two annual OGI work reports published by the Ministry of Human Resources and Social Security in 2009 and 2010 were the same. The annual OGI work reports published by the Dongguan Municipal Bureau of Statistics in Guangdong Province from 2008 to 2010 were also the same. Both agencies have corrected this stupid error. Baocheng Chen, *Ministry of Human Resources and Social Security Revises Its Annual OGI Work Reports* [人社部修正信息公开年报], SOUTHERN METROPOLIS DAILY, March 30, 2011, at AA17, <http://gcontent.oeeee.com/0/3f/03f5446139179452/Blog/899/f6e071.html> (last visited November 18, 2012); Weihua Chen, *Dongguan Statistics Bureau Published Almost Same Annual OGI Work Reports in Last Three Years* [东莞统计局信息公开工作报告三年几乎一字未改], SOUTHERN METROPOLIS DAILY, April 1, 2011, at AA03, <http://gcontent.oeeee.com/7/02/70222949cc0db89a/Blog/5ff/23ed44.html> (last visited November 18, 2012).
Corruption Perception Index\textsuperscript{1143} for China from 2002 to 2011\textsuperscript{1144} (see Table 7-18) indicates that the Chinese government has not made remarkable progress in the cleanliness of its officeholders since the country began local experiments with OGI rules in 2002. No government in the world would become cleaner overnight just due to enforcement of freedom of information legislation. OGI Regulations are still new; China has more to accomplish.

\textsuperscript{1143} Since 1995, Transparency International publishes the Corruption Perceptions Index (CPI). The index ranks countries annually by perceived levels of corruption determined by expert assessments and opinion surveys. The index generally defines corruption as “the misuse of public power for private benefit.” The CPI normally ranks more than 100 countries on a scale from 10 (very clean) to 0 (highly corrupt). Corruption Perceptions Index, Transparency International, Berlin, \texttt{<http://www.transparency.org/research/cpi/overview>\text{ (last visited November 18, 2012)}}.

\textsuperscript{1144} The compiled table is according to the Corruption Perceptions Index provided by Transparency International.


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<td>0</td>
<td>79</td>
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</tr>
<tr>
<td>General Administration of Quality Supervision, Inspection and Quarantine</td>
<td>NA</td>
<td>134</td>
<td>133</td>
<td>42</td>
<td>1</td>
<td>90</td>
<td>0</td>
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</tr>
<tr>
<td>State Administration of Radio, Film and Television</td>
<td>5644</td>
<td>35</td>
<td>35</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>0</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>General Administration of Press and Publication</td>
<td>7845</td>
<td>21</td>
<td>21</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>0</td>
<td>4</td>
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<td></td>
</tr>
<tr>
<td>General Administration of Sport</td>
<td>14486</td>
<td>108</td>
<td>108</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>State Administration of Work Safety</td>
<td>27190</td>
<td>14</td>
<td>12</td>
<td>7</td>
<td>1</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>National Bureau of Statistics</td>
<td>380</td>
<td>37</td>
<td>35</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
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<td>0</td>
<td>0</td>
<td>0</td>
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</tr>
</tbody>
</table>

Table 7-15: Information Disclosure of the Chinese Government (Year: 2011)
(Ministry of Land and Resources-National Bureau of Statistics)
### Table 7-16: Information Disclosure of the Chinese Government (Year: 2011) (State Forestry Administration-National Bureau of Corruption Prevention)

<table>
<thead>
<tr>
<th>Government</th>
<th>Proactive Disclosure</th>
<th>Requests Received</th>
<th>Requests Accepted</th>
<th>Requests Approved</th>
<th>Requests Denied On Legal Grounds</th>
<th>Requests Denied On Non-Legal Grounds</th>
<th>Administrative Reconsideration Disclosure</th>
<th>Administrative Reconsideration Other</th>
<th>Administrative Litigation Non-Disclosure</th>
<th>Administrative Litigation Other</th>
<th>Administrative Litigation Non-Disclosure</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Forestry Administration</td>
<td>202736</td>
<td>25</td>
<td>25</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>0</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>State Intellectual Property Office</td>
<td>630</td>
<td>8</td>
<td>8</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>National Tourism Administration</td>
<td>10425</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>0</td>
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</tr>
<tr>
<td>State Administration for Religious Affairs</td>
<td>2132</td>
<td>2</td>
<td>2</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
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<td>0</td>
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<tr>
<td>Counsellors’ Office of the State Council</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
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<td>NA</td>
<td>NA</td>
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<tr>
<td>Government Offices Administration of the State Council</td>
<td>414</td>
<td>8</td>
<td>7</td>
<td>7</td>
<td>0</td>
<td>0</td>
<td>0</td>
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<tr>
<td>National Bureau of Corruption Prevention</td>
<td>844</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Subtotal</td>
<td>2969187</td>
<td>10964</td>
<td>10939</td>
<td>706</td>
<td>64</td>
<td>1006</td>
<td>6</td>
<td>205</td>
<td>129</td>
<td>0</td>
<td>18</td>
</tr>
<tr>
<td>Grand Total</td>
<td>33968468</td>
<td>226533</td>
<td>219748</td>
<td>136308</td>
<td>4370</td>
<td>23369</td>
<td>92</td>
<td>1371</td>
<td>765</td>
<td>81</td>
<td>240</td>
</tr>
</tbody>
</table>

### Table 7-17: Information Disclosure of the Chinese Government (2008-2011)

<table>
<thead>
<tr>
<th>Government</th>
<th>Proactive Disclosure</th>
<th>Requests Received</th>
<th>Requests Accepted</th>
<th>Requests Approved</th>
<th>Requests Denied On Legal Grounds</th>
<th>Requests Denied On Non-Legal Grounds</th>
<th>Administrative Reconsideration Disclosure</th>
<th>Administrative Reconsideration Other</th>
<th>Administrative Litigation Non-Disclosure</th>
<th>Administrative Litigation Other</th>
<th>Administrative Litigation Non-Disclosure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Four-Year Grand Total for Provincial and Lower Level Agencies</td>
<td>97158983</td>
<td>960713</td>
<td>938674</td>
<td>602025</td>
<td>11159</td>
<td>58935</td>
<td>426</td>
<td>2635</td>
<td>2512</td>
<td>127</td>
<td>1073</td>
</tr>
<tr>
<td>Four-Year Grand Total For Central Agencies</td>
<td>12071712</td>
<td>35756</td>
<td>35588</td>
<td>3177.5</td>
<td>326.5</td>
<td>2609</td>
<td>25</td>
<td>356</td>
<td>203</td>
<td>0</td>
<td>32</td>
</tr>
<tr>
<td>Four-Year Grand Total for Agencies at All Levels</td>
<td>109230695</td>
<td>996469</td>
<td>974262</td>
<td>605202.5</td>
<td>11485.5</td>
<td>61544</td>
<td>451</td>
<td>2991</td>
<td>2715</td>
<td>127</td>
<td>1105</td>
</tr>
<tr>
<td>Year</td>
<td>CPI Score</td>
<td>Country Rank</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>2011</td>
<td>3.6</td>
<td>75</td>
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<tr>
<td>2010</td>
<td>3.5</td>
<td>78</td>
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<tr>
<td>2009</td>
<td>3.6</td>
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<tr>
<td>2008</td>
<td>3.6</td>
<td>72</td>
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<td>2007</td>
<td>3.5</td>
<td>72</td>
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<td>2006</td>
<td>3.3</td>
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<td>2005</td>
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<td>2004</td>
<td>3.4</td>
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<td>2003</td>
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<td>2002</td>
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<td></td>
</tr>
</tbody>
</table>

Table 7-18: China’s Corruption Perception Index (2002-2011)\(^{1145}\)

**Explanation of Tables from 7-1 to 7-17:**

Note 1: All the tables are compilations according to OGI annual reports published from 2008 to 2011 by provincial and ministerial level agencies. All the annual reports are downloads from official websites of corresponding governmental agencies.

Note 2: The tables cover all 31 provincial-level people’s governments: 22 provinces, 5 autonomous regions (Xinjiang, Tibet, Ningxia, Guangxi, and Inner Mongolia), 4 municipalities directly controlled by the central government (Beijing, Tianjin, Shanghai and Chongqing).

Note 3: The tables cover all 27 ministries and commissions under the State Council’s control, one special organization (State-owned Assets Supervision Commission) and 16 organizations directly supervised by the State Council. Central agencies supervised by the

\(^{1145}\) The table was created according to the data provided by Transparency International. *Corruption Perceptions Index*, Transparency International, Berlin, (http://www.transparency.org/research/cpi/overview).
State Council but not included in the tables are four administrative offices and 17 institutions. Also not included in the tables are 22 administrations and bureaus, which are functions of ministries & commissions. Since these are less important in terms of OGI, they are beyond the scope of this research and thus omitted. Visiting the website for organizational structure of the State Council: [http://english.gov.cn/links.htm](http://english.gov.cn/links.htm) will clarify.

Note 4: The tables cover all levels of the people’s government of China, from provincial to county and township levels, because the data released by provincial people’s governments are aggregate.

Note 5: “Government” in the tables’ column headings at the top of each page means governments of provinces, ministries, commissions, and organizations controlled by the State Council.

Note 6: “Proactive Disclosure” in the tables’ column headings at the top of each page means the total number of items of government information released affirmatively by official agencies.

Note 7: “Requests Received” in the tables’ column headings at the top of each page means the total number of OGI requests submitted by citizens, legal persons, or other organizations to agencies. Normally, official agencies only allow an OGI application to request one item of governmental information. A separate OGI request is necessary to request more than one piece of governmental information.

Note 8: “Requests Accepted” in the tables’ column headings at the top of each page means the total number of OGI requests marked as valid applications by official agencies. Requests not accepted by government agencies are considered to be invalid requests.

Note 9: “Requests Approved” in the tables’ column headings at the top of each page means the total number of OGI requests approved both fully and partially by official agencies.

Note 10: “Requests Denied on Legal Grounds” in the tables’ column headings at the top of each page means the total number of OGI requests denied by governmental agencies for the reasons that include: a) requested information involves state secrets; b) requested information involves commercial secrets; c) requested information involves personal privacy; d) requested information involves commercial secrets or personal privacy and the third party involved did not consent to disclosure; e) requested information might harm state security, public security, economic security, or social stability if disclosed; f) requested information appears in internal documents; g) requested information is internal management information or procedural information; h) requested information needs summarization, assembly, or reproduction; g) requested information is irrelevant to the applicant’s special needs; h) any other legal reasons specified by laws and regulations.
Note 11: “Requests Denied on Non-Legal Grounds” in the tables’ column headings at the top of each page means the total number of OGI requests denied by governmental agencies for reasons that include: a) requested governmental information does not exist; b) requested information is not in the possession of the agency which received the request; c) the request is ambiguous and fails to conform to required format; d) requested information is not official information; e) requested information has been transferred to archival institutions; f) requested information is the subject of repeated requests; g) the OGI annual reports do not specify grounds for agencies’ denying requests; h) any other non-legal reasons.

Note 12: The number of requests denied plus the number of requests approved equals the number of requests accepted.

Note 13: “Administrative Reconsideration” and “Administrative Litigation” in the tables’ column headings at the top of each page means the total OGI cases filed by requesters for administrative reconsideration or judicial relief. “Disclosure” means the total OGI cases with rulings favorable to requesters. “Non-Disclosure” means the total OGI cases with rulings a) upheld decisions of administrative agencies to deny disclosure; b) dismissed the case; c) withdrawn complaints. “Other” means the total OGI cases in any of the categories: a) unaccepted complaint; b) open case for unstated reasons or currently in litigation; c) closed case, but OGI annual reports do not provide details of the ruling.

Note 14: “NA” means either a) the annual reports of OGI annual activities do not provide relevant information, or b) the annual reports of OGI activities are not available. Some annual reports of OGI activities are inaccessible after searching the Internet, the official websites, Westlaw China (Wanlv zhongguo), LawInfoChina (Beida Fabao), and other relevant databases.

Note 15: From 2008 to 2011, each year has two categories of “subtotal” and one category of “grand total” under “Government” in the table column headings. One “subtotal” reflects OGI activities occurring at provincial and local levels, and another “subtotal” reflects OGI activities occurring at the central level. The “grand total” reflects OGI activities occurring at all levels of Chinese government.

Note 16: In addition to administrative reconsideration and judicial remedy, requesters of information in China have an alternative for seeking relief if they believe the information sought is improperly withheld or their legal rights pertaining to FOI have been violated. According to the alternative, they may report (jubao 举报) their OGI-related complaints to the next higher-level administrative agency, the supervisory agency, or the departments responsible for open governmental information. The agencies that receive the complaints are to investigate and resolve issues immediately. Many annual reports of OGI activities do
not contain information pertaining to the number of such complaints and or the resolutions of those complaints. Consequently, the tables listed do not include the number of complaints filed in the last four years.
Chapter Eight: Journalistic Internal Reference and Internal Working Documents:

Statutory and Non-Statutory OGI Exemptions

Introduction

This chapter will examine two types of governmental information exempt from disclosure requirements of OGI Regulations. One is internal reference and another is working secrets, with the former being statutory and the latter being non-statutory. Both exemptions play significant roles in restricting free flow of information between the Chinese government and citizens.

The internal reference system in China is unique; and Law on Guarding State Secrets 1988 generally shields from public view three kinds of materials: internal periodicals published by news outlets on sensitive subjects and sent exclusively to party and governmental leaders; internal periodicals published by party organizations, governmental agencies and other non-media entities;¹¹⁴⁶ internal movies and internal literature.¹¹⁴⁷ This

¹¹⁴⁶ The Chinese party and governmental agencies at various levels regularly publish internal periodicals. For example, The Chinese Communist Party (CCP) Central Propaganda Department publishes Propaganda Trend (Xuanchuan dongtai) weekly. The CCP Central Organization Department issues Party Construction Research Internal Reference (Dangjian yanjiu neican). Each institute at the China Academy of Social Sciences, a prestigious official think tank, produces various types of internal reference materials. Some large libraries in China publish internal reference materials for leading officials. For example, Sun Yat-Sen Library of Guangdong Province issues Decision-making Neican intended for political elites in Guangdong. Yuezhi Zhao, Media, Market, and Democracy in China: Between the Party Line and the Bottom Line 20 (1998); David Shambaugh, China’s Communist Party: Atrophy and Adaptation (2008); Decision-making in Deng’s China: Perspectives from Insiders 114 (Carol Lee Hamrin & Suisheng Zhao (eds., 1995); the Sun Yat-Sen Library internal reference online subscription is available at <http://www.zslib.com.cn/jingtaiyemian/taigangao/jcnc.html> (last visited November 18, 2012).

¹¹⁴⁷ Most internal films and internal literature were foreign films and books internally circulated only among the Chinese political elite during Chairman Zedong Mao’s era. Some erotic Chinese classics, like Prayer Mat Flesh and Jin Ping Mei (also known as The Golden Lotus), once classified as internal materials were accessible only to a small number of
The study will examine media-produced internal reference materials only. Internal reference materials generated by party and governmental agencies and non-media entities are beyond the scope of this research, despite deserving academic attention and examination. Internal movies and literature are also beyond the scope of this research because they have little relevance, and this study ignores them because they have gradually faded into oblivion since China's adopting policies of reform and openness to the outside world in the late 1970s.

As one method for controlling the free flow of information, the government's internal reference system of Chinese news media is influential, but also mysterious. Guoguang Wu, a former People's Daily commentator, recalled a warning in his first journalism class at Peking University, “an important part of a Chinese reporter’s job was to write internal articles that the public never sees.”

Xingdong Hu, a social science professor at the Beijing Institute of Technology, confirmed that journalistic internal references “are the most important way for [Chinese] party and governmental officials to learn about bad people in China. Paul Theroux is the author of many Western train travel classics such as The Great Railway Bazaar, The Old Patagonian Express and Riding the Iron Rooster: By Train through China. He provided extensive details of the classification of foreign books as internal reference materials by the Chinese government. George Orwell’s novel 1984 was a victim of many such foreign books during the reign of Zedong Mao.


news.”1149 When discussing the roles of internal publications and regular newspapers, Western scholars observed that, these two kinds of publications are “twin pillars” of the broader propaganda and political system of China.1150 The unique role of journalistic internal reference in Chinese society has aroused the intense interest of Western media.

*The New York Times once reported:*

> The Chinese sometimes complain that the one place where news is never found is in the newspapers. So perhaps it is not surprising that officials are so fond of a special breed of publications bearing the warning, “Internal Periodical-Guard Carefully.”1151

Most ordinary Chinese citizens consider internal reference to be something even more magical. They firmly believe that their voices would be heard and their problems instantly resolved as soon as their grievances appear in journalistic internal periodicals. As such, the mass production of fake internal reference materials has become a thriving industry in Beijing.1152 Some Chinese petitioners even contacted correspondents of the foreign media in Beijing and asked to have their complaints and grievances forwarded to

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1150 Ching-chang Hsiao & Timothy Cheek, *Open and Closed Media: External and Internal Newspapers in the Propaganda System*, in *Decision-making in Deng’s China: Perspectives from Insiders* 86 (Carol Lee Hamrin & Suisheng Zhao eds., 1995).


relevant Chinese officials, assuming that Western media publish similar internal reference periodicals.1153

This chapter will examine historical origins of the journalistic internal reference system in China, preparation of internal reference materials by journalists, publication by news organizations, and distribution to leading political and governmental officials for review. The chapter will also investigate legal privileges granted to internal reference materials, scrutinize the roles the internal reference system plays in communication processes of the party and the government. The chapter will consider the challenges of the system and its emerging trends, and analyze agencies’ using the system to obscure their activities.


1153 For relevant English-language scholarly articles and books covering the subject of Chinese internal reports to various degrees, see Benjamin L. Liebman, Watchdog or Demagogue? The Media in the Chinese Legal System, 105 COLUMBIA LAW REVIEW 1 (January 2005); Chin-fu Hung, The Politics of Cyber Participation in the PRC: The Implications of Contingency for the Awareness of Citizens’ Rights, 42 ISSUES & STUDIES 137, 139 (December 2006); Ching-chang Hsiao & Timothy Cheek, Open and Closed Media: External and Internal Newspapers in the Propaganda System, in DECISION-MAKING IN DENG’S CHINA: PERSPECTIVES FROM INSIDERS (Carol Lee Hamrin & Suisheng Zhao eds., 1995); DANIEL C. LYNCH, AFTER THE PROPAGANDA STATE: MEDIA, POLITICS, AND “THOUGHT WORK” IN REFORMED CHINA 270 (1999); INVESTIGATIVE JOURNALISM IN CHINA: EIGHT CASES IN CHINESE WATCHDOG JOURNALISM 121 (David Bandurski & Martin Hala eds., 2010); THE MAKING OF CHINESE FOREIGN AND SECURITY POLICY IN THE ERA OF REFORM, 1978-2000 53-54 (David M. Lampton (ed., 2001); Huai Yan & Suisheng Zhao, Notes on China’s Confidential Documents, 2 JOURNAL OF CONTEMPORARY CHINA 75 (1993); Jennifer Grant, Internal Reporting by Investigative Journalists in China and Its Influence on Government Policy, 41 INTERNATIONAL COMMUNICATION GAZETTE 53 (1988); Judy Polumbaum,
Benjamin Liebman, improved Western understanding of the Chinese system of internal reference through research of Chinese laws and media. However, that research focused only on the legal implications of internal references. As a whole, research of journalistic internal reference in Western academia is generally lacking in depth, scope, and comprehensiveness. Communications scholars, Jennifer Grant, Huai Yan, and Suisheng Zhao are Western researchers who produced articles exclusively focusing on the role of internal reference in China. However, Jennifer Grant published studies more than 20 years ago and the other two scholars published their research more than 10 years ago.

Due to sensitivity of internal reference, obtaining copies of internal reference materials is both difficult and illegal. As such, the current study relies heavily on Chinese-language articles retrieved from China Academic Journals (CAJ) Database and firsthand experience of a former Chinese journalist. Published in Chinese newspapers and magazines, many Chinese-language articles relate vivid stories of writing internal reference or neican, leaders’ reviews, and neicans’ influence on official decision-making. Such stories became public because either the author had long retired as a journalist, or the government declassified the neican. Additionally, some articles are instructions intended for young journalists to improve their reporting and writing skills in neican. In truth, the publications


1155 Benjamin L. Liebman, Watchdog or Demagogue? The Media in the Chinese Legal System, 105 COLUMBIA LAW REVIEW 1 (January 2005).

are extremely useful primary sources. Several recent interviews with Chinese journalists provided current information concerning the internal reference system. Secondary sources, such as academic journal articles, also provide insight, although they are not voluminous when compared to primary sources. This study uses only declassified internal reference materials.

In addition to the statutory exemption of internal reference, the non-statutory exemption agencies in China could use to deny information access is working secrets or internal working documents.\textsuperscript{1157} The term “working secrets” appears in \textit{Law on Public Servants 2005},\textsuperscript{1158} \textit{Public Procurators Law 1995},\textsuperscript{1159} \textit{Judges Law 1995}\textsuperscript{1160} administrative rules,\textsuperscript{1161} and local rules.\textsuperscript{1162} Despite the frequent use of the term, the definition of “working

\textsuperscript{1157} This chapter uses terms, such as internal reference, internal publication, internal periodical, inner-circulated reference material, internal report, \textit{neibu cankao} and \textit{neican}, interchangeably.

\textsuperscript{1158} The law mandates public servants’ responsibility to perform the duties of guarding state secrets and working secrets. The law also prohibits public servants from disclosing state secrets and working secrets. \textit{Law on Public Servants 2005}. Art.12. Art. 53.

\textsuperscript{1159} The law provides that public procurators maintain state secrets and procuratorial working secrets. According to the law, public procurators who score outstanding achievement for protecting state secrets and procuratorial working secrets receive rewards and those divulging state secrets or procuratorial working secrets receive punishment. \textit{Public Procurators Law 1995}. Art. 8. Art. 31. Art. 33.

\textsuperscript{1160} The law provides that judges maintain state secrets and judicial working secrets. According to the law, judges who excel in guarding state secrets and judicial working secrets receive rewards, and those who divulged state secrets and judicial working secrets receive punishment. \textit{Judges Law 1995}. Art. 7. Art. 30. Art. 32.

\textsuperscript{1161} For example, \textit{Rules of Determining the Scope of State Secrets in Auditing 1995} provide that working secrets regarding auditing are matters that are not state secrets but inappropriate for public inspection and unavailable for disclosure without proper prior authorization. \textit{Rules of Determining the Scope of State Secrets in Personnel Management 1989} provides that working secrets in personnel work that are not state secrets but inappropriate for public inspection are unavailable to the public without authorization.
secrets” is vague. In practice, working secrets are loosely defined as internal working documents that cover a wide range of information but insufficiently sensitive to classify as state secrets. This chapter will examine the specifics of how internal working documents are exempt from disclosure under many national FOI laws, the handling of internal working documents according to OGI Regulations, relevant rules, and legal interpretations, and the Chinese agencies’ shielding information from disclosure using the loophole in the law.

**Journalistic Internal Reference First Emerged in the 1930s**

Establishment of the journalistic internal reference system occurred in the 1930s when Chinese communists were guerrilla forces, and Kai-shek Chiang was the legitimate ruler of China. The Chinese Communist Party (CCP) broke Chiang’s military encirclement and created a Soviet-style regime in Ruijin, Jiangxi Province.¹¹⁶³

The CCP created two distinct communication systems in Ruijin. One is the “top-down” mode of communication which disseminated officially sanctioned information “from the leadership to the general public” via regular publications. Another was the “bottom-up”

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¹¹⁶² For example, *Guangzhou Provision on Guarding Working Secrets 2001*, the first local rule of its kind, provides that working secrets involve matters whose sensitivity does not reach the level of state secrets but remains prohibited for public inspection. *Guangzhou Provision on Guarding Working Secrets 2001*, Art. 2.

mode of communication, in which information accumulated at grass roots levels moved “upwards into the bureaucratic hierarchy” via internal reference.\textsuperscript{1164}

*Reference News (Cankao Xiaoxi)* is the first journalistic, internal periodical in modern Chinese history. Today, *Reference News* is no longer an internal publication; instead, it is China’s leading newspaper with a daily circulation of 3.2 million.\textsuperscript{1165} However, at the newspaper’s founding in 1931 by Xinhua News Agency, the intent for *Reference News* was not general readers but communist leaders above a certain level. Xinhua selected articles from the world’s major news agencies and journals and translated them into Chinese.\textsuperscript{1166} “This practice of news organizations’ providing intelligence for high-level Party leaders continues today.”\textsuperscript{1167}

No country in the world today has a journalistic internal reference system except China. In democratic countries, officials enjoy no better access to information than voters. They “learn about international events first from CNN, not from internal sources.”\textsuperscript{1168} Even in authoritarian regimes including communist ones, leaders in the government usually do

\begin{itemize}
\item\textsuperscript{1164} Chin-fu Hung, *The Politics of Cyber Participation in the PRC: The Implications of Contingency for the Awareness of Citizens’ Rights*, 42 ISSUES & STUDIES 137, 139 (December 2006).
\item\textsuperscript{1167} Yuezhi Zhao, *Media, Market, and Democracy in China: Between the Party Line and the Bottom Line* 15 (1998).
\item\textsuperscript{1168} Changing Media, Changing China 8 (Susan L. Shirk, ed., 2010).
\end{itemize}
not oblige reporters to gather intelligence for them. The inspiration for Chinese communists to create such a unique system is a worthy topic.

**Examination of Historical Origins of Journalistic Internal Reference**

Some scholars maintain that inspiration for Chinese journalists was Soviet colleagues’ publication of hidden reference materials for leading government officials. For example, historian of Chinese journalism, Stephen Mackinnon, stated in one study, “the wholesale importation into the PRC in the 1950s of the Soviet practice of ‘internal’ (neibu) publications [is] a uniquely diabolical method of combining censorship and propaganda in media control.” However, Mackinnon did not provide evidence to support the claim. The result of a database search fails to establish convincing support for the argument, and contrary to Mackinnon, the CCP created the internal reference system in the 1930s, not the 1950s.

Clearly, to determine if China imported the journalistic internal reference system from the Soviet Union requires additional research. The task is beyond the scope of this dissertation. Despite Mackinnon’s possibly correct assertion, seeking additional factors to

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1170 Fang Zuo is the founding editor of *Southern Weekend*. According to Zuo, in the 1950s, Chinese media copied the model of *Pravda*, which was the official newspaper of the Soviet Communist Party until 1991. Learning from *Pravda*, most Chinese newspapers, at that time, created “mass work departments” (qungongbu 群工部) to deal with letters to editors. The media published some letters while other letters may have had review by governmental officials, arguably, a precursor of internal reference. Bing Hong, Interview with Fang Zuo, Founder of *Southern Weekend* [《南方周末》创始人左方访谈], Mediachina.net, Beijing, <http://academic.mediachina.net/article.php?id=1410> (last visited November 18, 2012).
explain adoption of journalistic internal reference in China is worthwhile. Rationally, one source is Chinese communists’ obtaining inspiration from the country’s long history.¹¹⁷¹

Media law scholar, Benjamin Liebman, specifically observed:

> The development of such alternative sources of information to inform Party leadership of developments at the local level was not a complete innovation. During imperial times, China’s emperors relied on complex systems of communication, including secret reporting concerning local conditions or popular opinion, to keep themselves informed.¹¹⁷²

The origins of the Chinese journalistic internal reference traces back more than 1,000 years to publication of the world’s first newspaper, *dibao* (邸报)¹¹⁷³ during the Tang Dynasty. *Dibao* was an internal publication circulated only among officials throughout the country. Di officials who were “in charge of liaison between the court and regional administrations,”¹¹⁷⁴ wrote the articles for the regularly printed and circulated publication, which covered emperors’ activities, imperial rules and orders, official policies, promotions, demotions, and much other official information. Throughout subsequent dynasties, internal publications like *dibao* circulated among officials to keep them well informed.¹¹⁷⁵


For better understanding of events in their empires, Chinese emperors often employed human intelligence to complement internal publications. For example, Kangxi Emperor (1654-1722) of the Qing Dynasty secretly sent agents to gather important and confidential information. The information returned to Kangxi in envelopes that only Kangxi had the right to unseal. Later discoveries unmasked the father of Xueqing Cao, author of the Chinese classic novel, *Dream of the Red Chambers*, as Kangxi’s secret intelligence gatherer. Internal publications and human intelligence employed by rulers in ancient China inspired Chinese communists’ creation of their internal reference system.

**Journalistic Internal Reference Materials’ Publication and Circulation in China**

The journalistic internal reference system established by Chinese communists in Ruijin, Jiangxi Province was small and primitive. Communist leaders had an opportunity to upgrade that system after 1949 when Zedong Mao and his comrades exiled Kai-shek Chiang to Taiwan and established the People’s Republic of China.

Based on the Soviet media system, Chinese communist leaders created a unique media system, in which all media organizations are extensions of the party and governmental apparatus, each having an individual administrative rank. For example, the Chinese Communist Party (CCP) Central Committee has an official organ, *People’s Daily*, with a ministerial rank. The State Council, China’s national cabinet, controls Xinhua News Agency, also at the ministerial level, China Central Television (CCTV) and China National Radio (CNR) both of vice ministerial level. Despite affiliation with the party or the

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government, the CCP Central Propaganda Department censors those news organizations, and a member of the CCP Politburo Standing Committee supervises.

The four major, national news organizations, *People’s Daily*, Xinhua, CCTV, and CNR occupy the top of the media hierarchy in China. In addition to the ruling party and the government, non-Communist parties in China also have official media.\textsuperscript{1178} The party’s organizations for the masses, such as the All-China Workers Federation and the Chinese Communist Youth League have official publications. This media structure is “more or less reproduced” at the provincial, municipal, and county levels with decreased complexity.\textsuperscript{1179} Typically, a province, a city (or prefecture district) or a county\textsuperscript{1180} has a party news organ, a radio station, and a television station. The party’s media affiliates with the party committee. The radio station and the television station affiliate with the government. All need to report to the local CCP propaganda departments according to their corresponding administrative ranks. For example, supervision of *Sichuan Daily* occurs by the Sichuan Provincial CCP Committee Propaganda Department, while *Chengdu Daily* reports to the Chengdu City CCP Committee Propaganda Department.

\textsuperscript{1178} There are eight registered minor parties under the Chinese Communist Party direction: Revolutionary Committee of the Kuomintang, China Democratic League, China Democratic National Construction Association, China Association for Promoting Democracy, Chinese Peasants’ and Workers’ Democratic Party, China Zhi Gong Party, Jiusan Society and Taiwan Democratic Self-Government League.


\textsuperscript{1180} The county level media outlets are at the lowest level of the media hierarchy in China. Xiaoling Zhang, *Seeking Effective Public Space: Chinese Media at the Local Level*, 5 China: An International Journal 55 (March 2007).
According to four theories of the press, news media in communist countries have roles as organizers, agitators, and propagandists for the ruling communist party. Applied to the Chinese context, interpretation of these roles identifies the “mouth and tongue” (houshe 喉舌) of the party and the government. However, news media in China fulfill an additional important function, the “ear and eye” (er mu 耳目) of the party state. As communication scholar, Jennifer Grant observed, “The gathering and reporting of intelligence on domestic affairs to the government is central to the importance of the position of the Chinese investigative journalist within contemporary Chinese society.” Such dual functions of journalists apply to all mainstream news media organizations in China regardless of administrative rank or political prestige. However, in practice, traditional party and government-run news outlets such as the Xinhua news agency, People's Daily and CCTV prepare most internal reports; commercialized media “rarely, if ever, prepare internal reports.” Among traditional party and official news outlets, Xinhua News Agency is the largest and most influential producer of internally circulated news-related materials.

No clear-cut standards exist for what could appear in internal reports. Usually people assigned to write for neican are professionally capable and politically loyal,

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investigative journalists. Their training includes recognition of news appropriate for public release and those for internal references. In general, any information deemed too sensitive for the public but too important for officials to ignore become journalistic internal references. Such information includes, but not limited to: local corruption, official misconduct, social unrest, major natural disasters, and public health incidents. Central and local policy experiments considered by officials too premature for publicizing also appear in internal periodicals.

Journalists normally write internal references for their own employers; however, exceptions occur. Internal publications sometimes print or reprint articles provided by contributing journalists. For example, the internal publication of *People’s Daily* once carried a report of an irrigation project fraud and the report was authored by Qinrong Gao, a journalist in Shanxi Province.1185 *People’s Daily* or Xinhua reprinted many articles from *Hebei Daily*’s internal reports.1186

Depending on the publication or program,1187 internal reports, usually magazine-like,1188 appear either on a regular schedule or only “when issues of special importance”


1188 Certain investigative programs on CCTV prepare internal reports in the form of video stories. However, radio stations and some local television stations prepare internal reports, most often in written form. Benjamin L. Liebman, *Watchdog or Demagogue? The Media in the Chinese Legal System*, 105 COLUMBIA LAW REVIEW 1, 23 (January 2005).
arise. The administrative rank of the news organization and other factors determine recipients of internal publications based on party and officials’ levels. For example, internal reports from *People’s Daily*, *CCTV* and *Xinhua News* agency have general circulation to the party’s central level and state leaders. Internal reports from provincial party papers and electronic media generally circulate to provincial level leaders. News media affiliated with municipal party committees prepare internal reports circulated to municipal leaders. The sensitivity of the issue involved and the degree of confidentiality are also determining factors.\(^{1189}\)

Unlike most regular newspapers and magazines circulated by the state-run postal offices or private circulation companies, journalistic internal reference materials use secure and confidential channels for delivery.\(^{1190}\) When leading party and governmental

\(^{1189}\) For example, *Xinhua News* Agency publishes a wide range of internal reports with each circulated to different leadership ranks. Supplemental Final Proof of Domestic Trends (*Guonei Dongtai Qingyang Fuye*) circulates only among members of the CCP Politburo standing committee and members of the Politburo. Final Proof of Domestic Trends (*Guonei Dongtai Qingyang*) and Reference Materials Proof (*Cankao Ziliao Qingyang*) are only for leaders at provincial (*sheng*) and ministerial (*bu*) levels. Internal Reference (*Neibu Cankao*) circulates among party and officials at prefecture (*di/shi*) and bureau (*si/ju*) levels and above. Selected Compilation of Internal References (*Neican Xuanbian*) is only for leaders at county, division (*xian/tuan*), and section (*ke/ying*) levels. The accepted standard is: the less number of leaders having access to internal reports, the more sensitive and important the internally circulated information becomes. Yanhui Chen, *Demystify Neican* [内参揭秘], Phoenix TV, Hong Kong, June 23, 2005, <http://www.ifeng.com/phoenixtv/72943808999849984/20050623/572776.shtml> (last visited November 18, 2012).

\(^{1190}\) An informative example of the delivery of internal reference materials to officials is: “[t]he classified channel for internal reports includes a system of couriers-in Beijing; they once included a corps of motorcyclists in black uniforms with special vehicle number plates that allowed them to drive directly from the *People’s Daily* office into the Zhongnanhai compound. In Shanghai, a special vehicle carried a sealed box of internal reports daily from the *Wenhui Daily* [headquarters] to the airport; in Beijing the plane was met by a similar set of couriers, who drove the materials direct to Politburo offices. These reports are delivered
Officials receive internal reports, they read them carefully. Actually, the first thing many party and governmental leaders do in the morning is read internal reports prepared by Xinhua.\textsuperscript{1191} Officials write opinions in the margins of the internal publications if warranted. Having written suggestions, recommendations, or instructions, officials immediately forward copies of the annotated reports to lower level officials responsible for the issue.\textsuperscript{1192}

Often, prompt investigation of exposed problems ensues.

**Legal Privileges of Journalistic Internal Reference**

Compared to regular publications, internal reference materials in China enjoy special legal privileges. All internal materials have protection from *Law on Guarding State Secrets 1988*.\textsuperscript{1193} Information included in internally circulated publications represent three categories: top secret (*juemi 绝密*), highly secret (*jimi 机密*), and secret (*mimi 秘密*).\textsuperscript{1194} Divulging of top-secret information results in extremely serious harm to state security and national interests; divulging highly secret information causes serious harm to state security to a special classified communications office within the Central Committees’ [CCP] General Office.” Ching-chang Hsiao & Timothy Cheek, *Open and Closed Media: External and Internal Newspapers in the Propaganda System, in Decision-making in Deng’s China: Perspectives from Insiders 82* (Carol Lee Hamrin & Suisheng Zhao eds., 1995).


\textsuperscript{1192} Yibo Bo, a former senior leader in the Chinese Communist Party, had the habit of reading *neican* very carefully and writing voluminous opinions in the margins of *neican* articles. Zhenguo Yan, *Review Comments in Memory of Bo Lao* [重温批示 追忆薄老], 9 Hundred Year Tide (2009).

\textsuperscript{1193} *Law on Guarding State Secrets 1988* (amended in 2010).

and national interests, and exposing secret information causes harm to state security and national interests.\textsuperscript{1195} Internal journalistic information dubbed, “top secret,” has protection for a maximum of 30 years, beginning on the date of creation. Internal materials designated, “highly secret,” are classified for 20 years, and internal reference materials designated, “secret” are prohibited from public view for up to 10 years.\textsuperscript{1196} A state secret automatically loses its classification when the proscribed time for guarding it expires.\textsuperscript{1197}

\textit{Under Law on Guarding State Secrets 1988}, anyone violating the provisions of this state secrecy law receives punishment; if the violation constitutes a crime, prosecution of the individual for criminal responsibility ensues.\textsuperscript{1198} An example is Shanghai lawyer, Enchong Zheng, arrested and sentenced to three years in prison in a 2003, high-profile case for allegedly telefaxing a Xinhua internal reference article\textsuperscript{1199} to a non-profit human rights

\begin{itemize}
\item \textsuperscript{1195} \textit{Law on Guarding State Secrets 1988} (amended in 2010). Art. 10.
\item \textsuperscript{1196} \textit{Law on Guarding State Secrets 1988} (amended in 2010). Art. 15.
\item \textsuperscript{1197} \textit{Law on Guarding State Secrets 1988} (amended in 2010). Art. 19.
\item \textsuperscript{1198} \textit{Law on Guarding State Secrets 1988} (amended in 2010). Art. 44.
\item \textsuperscript{1199} On April 30, 2003, Xinhua journalist, Tingjun Huang, published an article in one of the Xinhua internal reference publications. The article concerned forced housing demolition incident in which a journalist on the spot was besieged. On May 28, 2003, the lawyer, Enchong Zheng, telefaxed a copy of the article to Human Rights in China, a non-profit organization based in New York. Zheng left a note on the copy of the article: “Xinhua internal reference, please cite.” Both the Shanghai Administration for the Protection of State Secrets and the National Administration for the Protection of State Secrets certified that the transmitted article was, indeed, “secret” (\textit{mimi}) and protected by \textit{Law on Guarding State Secrets 1988}. He Deng, \textit{How Did Lawyer Enchong Zheng Divulge State Secrets?} [律师郑恩宠是如何泄露国家秘密的？], \textit{BUND PICTORIAL}, November 6, 2003, <http://unn.people.com.cn/GB/14748/2172850.html> (last visited November 18, 2012).
\end{itemize}
organization in the United States. The Shanghai Second Intermediate Court ruled that Zheng violated the Law on Guarding State Secrets by leaking the protected journalistic internal reference to an overseas organization.

Given the serious legal repercussions for violating the law on state secrets, even reporters who write neican articles must be very cautious. They cannot disclose the internal reference materials to anyone without appropriate, prior authorization from relevant official bodies. Even repeating the neican content, orally, to a third party constitutes leaking state secrets. Having written a neican article, the reporter must submit the original to his supervisor and remove the article from the computer or whatever generating medium. Reauthorization is necessary if the reporter needs to review the article, and photocopying is forbidden. A former veteran journalist of an official Chinese news organization observed, “When publishable news are upgraded as secrets and placed under self-regulation, public discourse becomes effectively controlled by the officials.”

However, the state secrets protection law does not always entail forceful enforcement. Reporters who leaked classified internal materials avoid punishment if the consequences of releasing the secrets are minimal, if wrongdoers are powerful, if act has

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1201 INVESTIGATIVE JOURNALISM IN CHINA: EIGHT CASES IN CHINESE WATCHDOG JOURNALISM 144 (David Bandurski & Martin Hala eds., 2010).

authorization, or if the situation is a combination of these factors. Lin Xia is an example: As the incumbent deputy editor-in-chief of Xinhua News Agency, Xia revealed many shocking and unknown stories from internal reference publications in May 2010 when he lectured at Tianjin Foreign Studies University. According to Xia, Liwei Yang, the first man sent into space by the Chinese space program, emerged from the Shenzhou spacecraft cabin with his face covered in fresh blood. In order to make him look better before television cameras, “Workers had cleaned blood from Mr. Yang’s face before closing and reopening the capsule...” Xia also disclosed that Xinhua purposefully discounted the seriousness of the ethnic riots that erupted in Xinjiang in July 2009 in order to avoid escalation of the conflict. However, after reading the unadulterated internal report from Xinhua, Chinese President Jintao Hu shortened his overseas trip and returned home to deal with the crisis.

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Xia’s biographical information on the Xinhua website clearly shows no punishment for Xia’s aggressive leaking classified information carried in Xinhua internal reference publications.\textsuperscript{1207} The government’s gesture, ignoring Xia’s breech of regulations might lead to an interpretation indicating the party’ and the government’s gradual relaxing restrictions on internal reference materials to allow public accessibility and to declassify less sensitive information in a timelier manner.

In addition to the law protecting journalistic internal materials as state secrets, another legal privilege of the internal reference system concerns libel. In 1998, the Supreme Court issued a judicial interpretation of defamation, stating that, unlike other forms of news reporting, internal reports produced by reporters and intended for political leaders are “immune from liability for defamation.”\textsuperscript{1208} This protection is significant for journalists writing internal reports, first, because most internal reports are critical and prone to accusations of defamation, and second, given time constraints, journalists usually do not have sufficient evidence to support reports’ claims. The legal interpretation, prompted by a high-profile 1989 case in Sichuan Province, involved Haideng, a famous monk at Shaoling Temple in Henan Province, who sued a Sichuan Daily reporter for libel

\textsuperscript{1207} Agencies in China normally remove officials’ biographical information from official websites upon investigations of officials or their dismissals. The Xinhua website shows that Xia remains Xinhua’s deputy editor-in-chief. Autobiography of Lin Xia, \textit{available at} \texttt{http://www.xinhuanet.com/xhsjj/ling_xl.htm} (last visited November 18, 2012).

\textsuperscript{1208} Benjamin L. Liebman, \textit{Watchdog or Demagogue? The Media in the Chinese Legal System}, \textit{105 Columbia Journalism Review} 1, 102 (January 2005).
and failed on the grounds that the allegedly libelous article appeared in a Xinhua internal periodical. Ultimately, Haideng won the case on other grounds.\textsuperscript{1209}

Reporters have no concerns for libel suits when preparing internal reports for the party's or governmental leaders. However, caution is advisable when quoting from internal reports. The CCP Central Propaganda Department and the State Administration of Press and Publication issued a joint notice in 1998, prohibiting all news organizations in China from quoting Xinhua internal reference materials for regular publications.\textsuperscript{1210} Requirements insist news organizations file written applications to Xinhua for declassification when seeking to publish any information from Xinhua internal references.\textsuperscript{1211} With this legal restriction, news media intending to cite or publish internal reference materials must weigh many variables. The relative position of a news organization in the official media hierarchy is one. “While a national level newspaper might opt to use a provincial level \textit{neican}-not lightly, to be sure-a provincial newspaper would be tempting fate to do so.”\textsuperscript{1212}


\textsuperscript{1212} \textit{INVESTIGATIVE JOURNALISM IN CHINA: EIGHT CASES IN CHINESE WATCHDOG JOURNALISM} 144 (David Bandurski & Martin Hala eds., 2010).
Watchdog Role of Journalistic Internal References in Chinese Politics

The contribution of the internal reference system to China's political process is largely ignored in Western academia. Internal reference plays the dual roles of watchdog and think tank.

In the watchdog role, positive stories of official activities frequently occupy front pages of regular Chinese newspapers and constantly fill prime-time television hours. The scenario creates the misguided impression among Western observers that China does not have aggressive Western-style investigative journalism. Certainly, public side of Chinese journalism is highly restricted; as discussed previously, most media organizations in China are components of the party and government, and each has its corresponding administrative rank. A party directive prohibits reporters from openly criticizing party committees and official departments with which the news organizations have affiliations.\textsuperscript{1213}

For example, contrary to the party's policies is for \textit{Peoples' Daily} to be openly critical of the party's and government's leaders of the central level. Similarly, party discipline demands provincial party papers, such as \textit{Sichuan Daily} and \textit{Yunnan Daily} refrain from

openly criticizing officials of the provincial level. This infamous party directive creates
difficulty for local news media to cover local people and issues. The journalistic practices of
muckraking or exposing scandals in places other than the location of the media’s
headquarters (remote supervision, yidi jiandu 异地监督) are frequently forbidden. 1214
Other heavy-handed, official censorship strategies abound. The Central Propaganda
Department constantly issues directives to editors and publishers that “outline the latest
recommendations of dos and don'ts.” 1215 Fortunately, most of all these press restrictions do
not affect journalistic internal reference.

The greater latitude for internal references' covering newsworthy events, issues,
and people contributed to the vibrancy of investigative journalism, albeit accessible to a
limited population in China. Internal reports frequently expose problems and corrupt
officials from across the country, criticize official misconduct, and voice the suffering and
grievances of ordinary people. Global Times once reported:

Both Wang Lao and Chen Hui made their names as
investigative reporters at the age of 31. The difference
lies in the fact that Wang's story was never published in
any newspaper. In 1977, he shot down a rising political star
in Guangdong Province with his pen. But instead of being
printed in his newspaper, ... Nanfang Daily, Wang's report
went straight up the chain of China’s official internal

1214 Hubei Provincial Party Committee Prohibits Local Media from Practicing Remote
Supervision [湖北省委要求湖北媒体不搞异地监督 不搞跨省监督采访], CAIJING, December
November 18, 2012).

1215 Evan Osnos, The Forbidden Zone: How Far can a Provocative Editor Go? THE NEW YORKER, July
November 18, 2012).
reference system.\textsuperscript{1216}

While examples of watchdog journalism are numerous, a few are:

● The 2007 arrest of Zhiye Wang, the deputy party secretary of Zhenzhou City in Henan Province, followed a Xinhua internal report exposed his corruption.\textsuperscript{1217}

● The 2004 execution of Zhongrui Wan, the party secretary of Nandan County in Guangxi Province, resulted from covering up a major mine incident and employing thugs to threaten journalists attempting to report the incident. Two reporters from \textit{People's Daily} exposed the wrongdoing in internal reports.\textsuperscript{1218} Internal reference contributed to the strengthened \textit{Production Safety Law}, passed six months later.\textsuperscript{1219}

● Xinhua internal references exposed corrupt referees in Chinese football.\textsuperscript{1220}


• Xinhua *neican* exposed Qinghai Provincial Higher People’s Court judges in 1985 for shielding a murderer.\(^{1221}\)

• The imprisonment of Junfeng Bai, the deputy party secretary of Zhanjiang City in Guangdong Province, in the late 1970s followed the internal report to his supervisor from *Nanfang Daily*, detailing willful misconduct, rape, and corruption.\(^{1222}\)

• A Xinhua journalist described in his 1978 *neican* articles the shocking poverty in Yan’an, a Shanxi city, which once served as the capital of Chinese communists.\(^{1223}\)

• Zhigang Sun, a 27-year-old graphic designer, detained in March 2003 by Guangzhou police, died from torture due to mistaken identification as one of the "three withouts"-a person without identification papers, without a normal residence permit, and without proof of income. Xinhua internal periodicals, sent to leaders, covered the Zhigang Sun incident. In June 2003, the infamous *Regulations on Custody and Repatriation of Homeless Beggars 1982* were repealed.\(^{1224}\)

A former Xinhua reporter said that the number of problems resolved through internal references far exceeds the number of problems resolved through regular

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\(^{1223}\) Bingshen Jia, *Truth-Seeking Warrior: Note on Famous Xinhua Journalist Senling Feng* [追求真理的战士 (下)－记新华社著名记者冯森龄], 2 JOURNALISM KNOWLEDGE (1998).

publications. “This is where the official media in China are most proud about their work. Given that they have internal references to write, many Chinese journalists no longer care about how mediocre their regular publications are.”

Advisory Role of Journalistic Internal References in Chinese Politics

In addition to the watchdog role, another role in which neican reporters in China take pride is advising the party’s and government’s policymaking processes. Cases exemplifying the role are numerous:

- Hongqi, one of China’s oldest upscale car brands, restored its production in the 1950s after an Economic Daily journalist wrote an internal report on the topic.1227
- People’s Daily neican reported how one million poverty-stricken residents in the coastal city of Shenzhen fled to nearby Hong Kong in the 1960s, prompting Xiaoping Deng to create the Shenzhen Special Economic Zone in 1980.1228

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1228 In four internal reports, People’s Daily journalist, Yunshan Lian, recommended creation of a special economic zone in Shenzhen, which is adjacent to Hong Kong. Yun Su, Internal Reports on Shenzhen Residents Fleeing to Hong Kong in the 1960s [六十年代深圳大逃亡期间一份用生命写出的内参], 5 CENTURY (1994).
The resumption of *Gaokao*, the National College Entrance Examination in China, became possible after a *People’s Daily* journalist sent a *neican* to Xiaoping Deng in 1977 when the Cultural Revolution just ended.\(^\text{1229}\)

In the late 1970s, internal reference materials from leading media outlets initiated the great nation-wide debate for the criteria of truth. The debate countered some political elite’s unquestioning loyalty to Zedong Mao’s policies. Internal reference materials became the source for formulation of the nation’s fundamental policy of reform and openness to the outside world after 1978.\(^\text{1230}\)

Some Xinhua *neican* articles saved the life of Jinrun Chen, a famous Chinese mathematician and aided the party’s adjusting policy toward intellectuals.\(^\text{1231}\)

Journalistic internal reference assisted the party’s establishing the farmer household responsibility system in the countryside in the early 1980s.\(^\text{1232}\)

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\(^{1231}\) Mai’nan Gu, *Looking for Mathematician Jinrun Chen* [寻访数学家陈景润], *8 YAN-HUANG HISTORICAL REVIEW* (2007).

• Creation of Zhongguancun, China’s Silicon Valley, is a result of recommendations from internal publications.\textsuperscript{1233}

• Abolition of the infamous agriculture taxation system occurred in 2006 after several internally-circulated articles reported the deaths of many poor farmers forced by violence to pay taxes.\textsuperscript{1234}

• Chinese President Jintao Hu shortened an overseas tour after receiving Xinhua News Agency’s internal briefing on the seriousness of the ethnic rioting in the far-western region of Xinjiang Autonomous Region in July 2009.\textsuperscript{1235}

• On the 100th day of the 2010 World Expo in Shanghai, Xinhua reporters filed 101 internal reference reports to leaders. A veteran Xinhua reporter said, “We are like a think tank for the government.”\textsuperscript{1236}

Chinese journalists writing internal reports have contributed to the political policy-making process, similar to think tanks in the West. Intelligence gathered by journalists may indicate that a policy implemented in the past was inappropriate, thereby influencing political leaders to abolish the policy. Internal reports might expose “inadequacies and

\textsuperscript{1233} Junsheng Xia, How Zhongguancun Came into Birth [中关村高新技术产业区的由来], 7 YAN-HUANG HISTORICAL REVIEW (2009).


flaws” within a policy and convincing policymakers to reform or revise the policy. Journalists writing internal reports might raise questions or issues, previously unconsidered by decision makers, leading to formulation of new policies. 1237

The reason that the party and the government in China designate news media as unofficial advisor for policy-making is fourfold: First, journalists have advantages in collecting intelligence. They travel widely and have a wide range of contacts. They have easy access to high-level leaders and prestigious scholars, but at the same time, they can converse with ordinary people without restraint. Second, investigative reporters are usually insightful and accustom themselves to meet deadlines, so their reports are usually fresh and timely. Third, decision makers can combine internal reports with information acquired through routine bureaucratic channels to understand, better, a situation. Last, internal reports provided by news organizations are especially valuable when regular communication channels within the bureaucracy are blocked “for bureaucratic and political reasons.”1238

**Challenges and Limitations of Journalistic Internal Reference**

Journalistic internal reference may contribute to officials formulating well-informed decisions and apprehend miscreants within the bureaucracy. However, the system has its own challenges and limitations. The first challenge is the increasing pervasiveness of the Internet. Compared to traditional media, the Internet enjoys clear advantages for gathering, producing, and delivering information to the widest audience. As an example, *Liberation*

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*Daily Internal Report* in Shanghai has had a decrease in the percentage of contributing articles for the internal publication from 30 percent to five percent in the last 10 years. Most contributing writers no longer send articles to *Liberation Daily Internal Report*; instead, contributors submit stories on the Internet for timely publication and greater social impact.1239

The second challenge is the power of market and money. Chinese media are becoming increasingly commercial in recent years,1240 and as a result, market-oriented media outlets have proliferated in China. Most such media outlets are metropolitan newspapers and magazines that receive no funding from the government and survive independently.1241 In order to compete successfully in the market, market-oriented media is conducive to publishing sensitive and controversial topics.1242 Perhaps the parent

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1239 Lingying Wang, *Examination of Internal Reference Orientation in the Internet Age* [网络时代的内参取向探析], *9 SHANGHAI JOURNALISM REVIEW* 81 (2010).


newspapers\textsuperscript{1243} may require their affiliated media outlets to write \textit{neican} in some cases, but generally, those market-oriented publications “rarely, if ever, prepare internal reports.”\textsuperscript{1244} This situation contributes to many news stories appearing on front pages of metropolitan publications, which newsstands sell almost everywhere in any major Chinese cities. In the past, those stories would have appeared on desks of high-ranking officials in the form of internal reference.

The party’s traditional news outlets prepare most internal reports for leaders. Confronting the pressure of commercialization, most of the party’s traditional news organizations face reduced subsidies from the government.\textsuperscript{1245} In order to increase circulation and adverting revenues, even traditional party outlets tend to publish more and more stories otherwise printed in internal periodicals in the past.

Commercialization also contributes to the decreasing number of reporters willing to be unknown heroes. If the byline of an investigative journalist appears frequently on the front pages of a prestigious, regular publication, fame ensues among tens of millions of readers. However, the byline appears on the front page of an internal publication with the same frequency, no notoriety results outside the realm of political and governmental leaders. For this reason, some reporters prefer writing for regular publications than for

\textsuperscript{1243} In China, most market-oriented metropolitan newspapers and magazines are affiliated with party newspapers.

\textsuperscript{1244} Benjamin L. Liebman, \textit{Watchdog or Demagogue? The Media in the Chinese Legal System}, \textit{105 Columbia Law Review} 1, 23 (January 2005).

\textsuperscript{1245} China announced, in 2003, ending subsidies to all newspapers in the country, except some major ones like \textit{People’s Daily}. The announcement directed all publications to suspend ties to official departments and cease mandatory subscriptions. Jiafei Yin, \textit{Beyond Four Theories of the Press: A New Model for the Asian and the World Press}, 10 \textit{Journalism & Communications Monographs} 3, 4 (Spring 2008).
internal ones. Binyan Liu, the renowned former journalist of *People’s Daily*, expressed his disenchantment with internal reports in a semi-fictional story, “The inside News of the Newspaper.”

Some journalists wish to write for internal publications, but they harbor different motivations. They attempt to use the power of writing internal reports to seek personal gains. Some reporters threaten to write negative pieces and internal reference materials to obtain “publicity fees” from businesses. Kui Feng, a young journalist from the *People’s Daily* office in Liaoning Province, was arrested and jailed for accepting bribes from a corrupt mayor of Shenyang City. After taking the bribes, Feng submitted two internally-circulated articles to central leaders in Beijing to whitewash the official. Some Xinhua journalists were expelled for using the power of *neican* to blackmail a local coalmine owner in Shanxi Province. The mine exploded due to negligent security. After accepting payoffs in cash and gold ingots from mine owners, the Xinhua journalists remained silent on the accident. Ironically enough, a reporter from *China Youth Daily* exposed this journalistic

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1246 In that piece, Liu described vividly an enthusiastic and idealistic young journalist’s dissatisfaction with internal reports. “For a long time now, her reports had been classified as inside information. They were typed, printed, and distributed to the offices concerned, or used as reference materials for guest authors writing articles.” Jennifer Grant, *Internal Reporting by Investigative Journalists in China and Its Influence on Government Policy*, 41 International Communication Gazette 53, 58-59 (1988).


scandal in his internal reference articles that caught the attention of a CCP politburo member.1249

The third challenge for internal reference is its inability to hold high-ranking officials accountable. As mentioned previously, internal reports play a watchdog role for corruption and official misconduct. However, this system has an inherent institutional drawback. The journalist becomes a watchdog if the internal report involves officials below provincial/ministerial levels. The journalist becomes a lapdog if the report concerns problematic officials above provincial/ministerial levels, not to mention officials at the very pinnacle of the Chinese political hierarchy. Expecting neican to break a scandal of magnitude of Watergate in China is a futile exercise.1250

Xingdou Hu, a social science professor at the Beijing Institute of Technology, observed that high-level corruption is undoubtedly among issues that “even neican won’t touch.”1251 When discussing the limits of neican, The New York Times quipped, “[n]o

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1249 Investigative Journalism in China: Eight Cases in Chinese Watchdog Journalism 121 (David Bandurski & Martin Hala eds., 2010).

1250 China’s journalism often receives ridicule from the public as “only targeting flies (low-ranking officials and low-level corruption) and “dead tigers” (high-level corruption that the state has already determined to eliminate) but rarely “unrestrained tigers” (high-ranking corrupt officials still in power). This finding applies to regular publications and also to internal publications, although to a lesser degree. If China’s investigative reporters writing neican are watchdogs, they are watchdogs on the party’s leashes. HAIQING YU, MEDIA & CULTURAL TRANSFORMATION IN CHINA 94-95 (2009).

Chinese journalist would regard it as career-enhancing to tell Prime Minister Li Peng that he is unpopular.”

Another area untouchable by internal reports is the People’s Liberation Army (PLA). The military plays an extremely important role in Chinese politics. Without the full support of soldiers, the party would have difficulty maintaining power, and the party willingly ignores misdeeds despite knowing that military corruption is no less rampant than in civil governments. The civilian authorities just “don’t dare to use the media, civil or military, as a watchdog to monitor the PLA the way they do over local governments.”

Neican will accomplish nothing if the supreme leader is wrong and stubborn. Although Zedong Mao received significant amounts of fake reports from local officials glorifying the achievements of the Great Leap Forward Movement in 1958, Mao actually knew, clearly, the gravity of the economic situation at that time. Mao had sufficient

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1253 CIVIL-MILITARY RELATIONS IN TODAY’S CHINA: SWIMMING IN A NEW SEA (David M. Finkelstein & Kristen Gunness eds., 2006).


1255 CHANGING MEDIA, CHANGING CHINA 31-21 (Susan L. Shirk, ed., 2010).
information from daily journalistic internal references; however, he did not modify the disastrous economic policies those reports suggested.

Journalists writing internal reports can exert influence on political and governmental leaders, but reporters are vulnerable to manipulation of those leaders. During the Cultural Revolution, a large number of neican reporters were investigated and even jailed.” Among them were Gongran Xia, who was the director of the Xinhua Internal Reference Department, and Feng Jin who was an influential People’s Daily journalist. Xia was purged for writing politically incorrect internal reports and standing with Liu Shaoqi, a leader Mao wanted to purge. After arrest, Jin received a five-year jail sentence for writing three internal reports exposing the dark side of Chinese air forces and Central Cultural Revolution Small Group. Editors at World Economic Herald in Shanghai were purged in 1989, although its internal report went directly to Xiaoping Deng and other

1256 Ching-chang Hsiao & Timothy Cheek, Open and Closed Media: External and Internal Newspapers in the Propaganda System, in Decision-making in Deng’s China: Perspectives from Insiders 82 (Carol Lee Hamrin & Suisheng Zhao eds., 1995).


1258 Gongran Xia & Xiaomei Xia, Cultural Revolution Transformed Me [“文革”对我的洗礼], 4 Journal of Observation and Reflection (2002).

1259 Feng Jin, My Experience of Writing Neican at People’s Daily [我在《人民日报》写内参的经历], 10 YAN-HUANG HISTORICAL REVIEW (2005). Establishment of The Small Group, occurred in May 1966 under the direction of first, Chen Boda, and later Mao’s wife, Jiang Qing. This small group effectively displaced the Politburo Standing Committee at the beginning of the Cultural Revolution and held de facto control of the country. For more information about the Central Cultural Revolution Small Group, see Hong Yung Lee, The Politics of the Chinese Cultural Revolution: A Case Study (1978).
party leaders. Binyan Liu, *People’s Daily* journalist, who once sent internal reports personally to the then-CCP General Secretary, Yaobang Hu, was also purged and died in exile in the United States.

**Future of Journalistic Internal Reference System**

Given the shortcomings and drawbacks, some scholars and National People’s Congress deputies argue for abolishing journalistic internal reference and accessibility of newsworthy items for everyone. For example, Jiang Zhan, professor of Beijing Foreign Studies University Department of Journalism and Communication, argued that internal reference is “an information vehicle for a small privileged class. They are like *Dibao* in ancient times, and they are not standard news in modern society. Internal reference materials are only suitable for an agrarian society or in a time of war...solving social issues should depend on a free flow of information.”

Communications scholar, Yuezhi Zhao, attacked the internal reference system from the perspective of participatory democracy or informed citizenry. Due to limitations on

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regular news coverage of the government’s decision-making process and classified status of internal reference reports carrying information relevant to policy-making, “Citizens are systematically excluded from vital information that would enable them to participate in policy-making.”1263 Shunxing Huang, the member of the seventh NPC Standing Committee, refused to grant an interview to a journalist who promised that the conversation would be published in internal reference publications. He said to the reporter, “I am a people’s congress deputy. The people are above anyone else. External reference is more important than internal reference!”1264

Most ordinary Chinese citizens seem disenchanted with the practice of classifying newsworthy information as internal reference. Some bloggers argue that internal reference is an information privilege enjoyed by the political elite and abolishment should occur immediately because the system deprives Chinese citizens of the right to know. The enforcement of OGI Regulations renders abolishment of journalistic internal reference an even more urgent and necessary task.1265 One blogger stated that the public ought to have


access to Xinhua internal reference materials like any other official information according to OGI Regulations.\textsuperscript{1266}

However, not all scholars or journalists agree with the abolishing journalistic internal reference. Guoming Yu, professor of Renmin University of China, contended that “internal reference system might be abolished in the future. However, at the moment, eliminating internal reports is intolerable for China’s political system.”\textsuperscript{1267} Yu explained that disclosing all internal publication materials to the public without any restriction would cause “enormous societal conflict.”\textsuperscript{1268} Xinhua editor Lin Xia maintains a similar attitude by citing ethnic rioting in Xinjiang in July 2009 as an example. He said that if Xinhua reported the riots to the fullest extent, that “would have only further inflamed the conflict” and caused more serious human and economic damages.\textsuperscript{1269}


\textsuperscript{1269} Xiao Qiang, \textit{Xinhua Deputy Chief Editor Reveals Secret Details of Old News Stories}, \textit{CHINA DIGITAL TIMES}, June 1, 2010,
Despite the criticism and system’s shortcomings, party and governmental officials in China continue to rely heavily on the internal reference system for the foreseeable future. Perhaps, the influence of journalistic internal reference will increase in coming years. Statistics support the rise of Chinese journalistic internal reference in the digital age.

According to Xinhua data compiled to measure the impact of its activities, at the party’s five-year congress in 2007, Xinhua issued more than twice as many internal reports as for the 2002 event.\textsuperscript{1270} In 2003, the number of comments written by leaders in the margins of Reference Materials Proof rose by 88 percent, compared with the year before. Chinese President Jintao Hu wrote six.\textsuperscript{1271} Reference Proofs (Supplementary Sheets), published more than three times as many reports in 2003 as in 2002.\textsuperscript{1272} In 2007, Xinhua’s yearbook reported a 15 percent growth in the number of Proofs of Domestic Trends (A Digest of Online Public Sentiment) and a 50 percent increase in leaders’ comments on them.\textsuperscript{1273} People’s Daily is planning to compete aggressively with Xinhua in quality and


The growth of journalistic internal reference is unsurprising because Chinese party and governmental leaders view journalistic internal reference as an indispensable source of information. Ambitious investigative journalists who are politically reliable and professionally insightful are authors of internal reference materials, and sensitive and controversial materials transmit directly to central and local leaders without filtering or delay. Many problems and conflicts have quiet resolution without incurring negative publicity.\footnote{Lingying Wang, Examination of Internal Reference Orientation in the Internet Age [网络时代的内参取向探析], 9 SHANGHAI JOURNALISM REVIEW 81 (2010).} In addition, party and governmental officials can compare journalistic internal reference with the similar information gathered through bureaucratic channels to discover inconsistencies and possible prevaricators in the communication process.

**Journalistic Internal Reference as Statutory OGI Exemption: Governmental Agencies May Use the Exemption to Withhold Information**

China enacted OGI Regulations in 2007, as the first nationwide legislation for freedom of information and as a statutory obligation for agencies to disclose information, proactively. The law also allows any citizen, any legal person, and any other organization in China to apply for the disclosure of government-held information. Upon rejection of an OGI
application by governmental agencies, the requester has the right to pursue administrative and judicial remedies.\textsuperscript{1276} China’s entry into the global freedom of information community indicates strongly that China seeks to establish a more open and transparent government. However, the internal reference system clearly counters the concept of governmental transparency.

The enforcement of \textit{OGI Regulations} raises at least three questions for the viability and legality of journalistic internal reference: 1) Do news organizations directly under the jurisdiction of the people’s government have an obligation to follow \textit{OGI Regulations} like governmental agencies?\textsuperscript{1277} 2) Is information contained in internal reference materials official information defined by \textit{OGI Regulations}? 3) Will agencies and news organizations agree if citizens ask for proactive and reactive disclosure of information carried in journalistic internal reference? Currently, no scholars, either Chinese or foreign, have posed or answered these three questions.

The answer to the first question is not a definite, “Yes.” As discussed earlier, unlike private news media in Western countries, most traditional news media in China are institutions affiliated with the party’s and state’s bureaucracies, and all have corresponding administrative ranks. The party and the government have the ambitious plan to reshape the media landscape by delinking most party-run or government-run news organizations

\textsuperscript{1276} \textit{OGI Regulations} 2007.

\textsuperscript{1277} News organizations as institutions directly under the party, the court, the procuratorate, the people’s congress and the political consultative conference (e.g., \textit{People’s Daily} and \textit{People’s Court Daily}) do not have an obligation to follow \textit{OGI Regulations} because their supervisors are not official agencies defined by law. However, whether or not news organizations affiliated with the government have an obligation to follow \textit{OGI Regulations} is much less certain.
from their original supervisors and restructuring them into market-oriented, state-owned, Western-style media conglomerates. However, the basic media management structure remains unchanged today due to the sensitivity and complexity of reform.1278

For example, Xinhua New Agency, the largest producer of internal reference materials in China, is still an institution directly under the State Council. Other institutions similarly controlled and mandated to follow OGI Regulations are Chinese Academy of Sciences, Chinese Academy of Social Sciences, Chinese Academy of Engineering, Development Research Center of the State Council, China National School of Administration, China Earthquake Administration, China Meteorological Administration, China Banking Regulatory Commission, China Securities Regulatory Commission, China Insurance Regulatory Commission, State Electricity Regulatory Commission, National Council for Social Security Fund, National Natural Science Foundation, Taiwan Affairs Office of the State Council, Information Office of the State Council, and State Archives Administration.1279 One blogger affirmed disclosure of Xinhua internal reference materials to the public similar to any other official information identified by OGI Regulations.1280 The


1279 The Organizational Structure of the State Council is available at <http://english.gov.cn/links.htm>

blogger’s view is valid, at least from the perspective of Xinhua’s special status. As the country’s official news agency, authorized by the State Council to supervise and certify information gathering and dissemination of foreign news agencies in China,1281 Xinhua News Agency falls into the category of quasi-official agencies having responsibility for disclosing information under Article 36 of OGI Regulations.1282 China Central Television, China National Radio, and China Radio International remain institutions directly controlled by the State Administration of Radio, Television and Film.1283

Compared to Xinhua, whether or not these three electronic media giants are OGI-designated quasi-agencies authorized to manage public affairs1284 or OGI-stipulated institutions providing basic public services1285 is less certain due to a lack of definitions for public affairs and public services. An expansive interpretation of the public affairs and public services clauses in OGI Regulations1286 would likely include China Central Television,

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1282 Article 36 provides that OGI Regulations apply to opening official information activities of organizations authorized by laws or regulations to exercise functions for managing public affairs. OGI Regulations 2007. Art. 36.

1283 The official website of the State Administration of Radio, Television and Film is <http://www.sarft.gov.cn/>.

1284 OGI Regulations 2007. Art. 36.

1285 Article 37 provides that OGI Regulations apply to institutions and public enterprises that provide public services closely related to the people’s interests. OGI Regulations 2007. Art. 37.

China National Radio, and China Radio International as public institutions having a legal obligation to publicize information made or obtained in the process of performing their duties. A similar legal analysis is possible to examine the applicability of OGI Regulations to news organizations at provincial and local levels.

The response to the second question is both, “Yes and no.” The affirmative is appropriate because journalistic internal reference, undeniably, contains volumes of information obtained by agencies in the course of discharging responsibilities, recorded and stored in a given form.\textsuperscript{1287} The negative is appropriate because some information in journalistic internal reference may not involve governmental agencies at all.

The answer to the last question is a definite, “No.” While some isolated cases of divulging journalistic internal reference materials by individuals like Xinhua editor, Xia, and some other journalists, as of July 2012, no agencies in China have proactively disclosed information from journalistic internal reference. Agencies prefer to avoid indicating sources of information; consequently the public would never know the information came from internal reference. As for reactive disclosure, as of July 2012, no submitted OGI requests for information included classified or declassified internal reference publications. If such an application occurs in the future, agencies may use the state secrets exemption in OGI Regulations to withhold information. Whether the contents printed in journalistic internal reference are truly state secrets depends upon the discretion of media organizations and relevant agencies responsible for guarding state secrets. A reasonable assumption for ordinary citizens is that a wealth of data in journalistic internal reference

\textsuperscript{1287} OGI Regulations 2007. Art. 2.
does not comprise state secrets. Instead, the information represents newsworthy stories
comprehensible by the public.

**Working Secrets are Exempt in Many National FOI Laws**

Working secrets in the Chinese context are the equivalent of “internal working
documents” widely exempt in many national FOI laws. In the United States, for example,
*U.S. FOIA* identifies two kinds of internal working documents that are exempt from
disclosure. One is housekeeping practices in Exemption 2 of the *FOIA* and the other is intra-
agency and interagency memoranda and letters identified in Exemption 5.\footnote{1288} Exemption 2
shields from disclosure risk-of-circumvention records and records of internal agency
personnel rules and practices like hiring, dismissal, work rules, discipline, compensation,
and benefits.\footnote{1289} Exemption 5 shields three kinds of information from disclosure: working
papers such as studies, reports, memoranda, and other sorts of documents prepared and
circulated to assist official decisions or policies (deliberative process privilege);
conversations and materials between an agency and its attorneys (client-attorney
privilege), and communication between the president and key advisors (executive privilege
document or presidential communications privilege).\footnote{1290} Most information in Exemptions 2
and 5 of *U.S. FOIA* coincides with the Chinese context of working secrets.

Internal working documents are exempt in *U.S. FOIA* and many other national FOI
laws for several reasons. Official records of employees’ work schedules, coffee break rules,
sick leave policies, and personal parking assignments are trivial administrative matters and


\footnote{1289} Milner v. Department of the Navy, 131 S. Ct. 1259 (2011).

\footnote{1290} DON. R. PEMBER & CLAY CALVERT, MASS MEDIA LAW 349-51 (2013).
have no basis for genuine public interest. The release of public records of pre-decisional and deliberative communications could inhibit frankness and candor in future pre-decisional communications. The disclosure of information of deliberations of policy alternatives could lead to confusion and prejudice the integrity of the decision-making process. Communications between an attorney and a client are inviolately private. However, the internal working documents exemption is not absolute. In order to prevent agencies from abusing this exemption, many national FOI laws impose restrictions on scope. For example, in U.S. FOIA, the deliberative process privilege is not absolute. The privilege does not protect purely factual information related to the process of policy development from being disclosed. Disclosure of factual information generated in the decision-making process must occur unless such information is inextricable from protected information regarding an agency's decision.

Working Secrets Inconsistencies in Chinese OGI Legislation

Whether or not working secrets or internal working documents shall have exemptions in OGI Regulations has engendered significant debate in China since drafting the initial law. Most Chinese legal reformers object to the proposal of writing “working secrets” into OGI Regulations as an exemption because the term has no boundaries and may

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apply to any information that is not designated a state secret. However, some scholars argued that internal working documents, such as requests for instructions, research reports, leading officials’ views, and minutes need exclusion from disclosure, and shielding such documents from disclosure is standardized international practice.

Among the seven exemptions in the Academic Draft of OGI Regulations formulated by legal scholars in 2002, two concern internal working documents. Exemption 3 states that matters of no public interest and matters that relate purely to internal agency’s personnel rules are not subject to disclosure. Exemption 6 states that pre-decisional and deliberative information generated in interagencies’ or intra-agencies’ policy discussions are exempt from disclosure if such disclosure may prejudice the integrity of the decision-making process and cause public confusion.

The State Council officials, who approved the final statutory language of OGI Regulations, rejected legal scholars’ recommendations for exempting internal working

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documents from disclosure. Finally, OGI Regulations provide no provisions to clarify if working secrets or internal working documents are exempt from disclosure. The ministries, commissions and departments under the State Council followed this approach. None of the rules for implementation of OGI Regulations formulated by those central agencies has provisions for this issue. Some local governments’ OGI rules for implementation provide that internal working documents are exempt from disclosure but provide no restrictions to limit the scope of that exemption.

In an administrative interpretation, the State Council provides that internal working documents are exempt from disclosure. According to the interpretation, shielding from disclosure requirements of OGI Regulations remains for information generated or obtained from routine management of internal agencies and procedural information still under


1298 For example, Provisions of Shanghai Municipality on Openness of Government Information 2008 provides that official, pre-decisional and deliberative information is exempt from disclosure because the disclosure of such information may harm state security, public security, economic security, or social stability. Provisions do not impose any restrictions on the scope of the exemption. Provisions of Shanghai Municipality on Openness of Government Information 2008 [上海市政府信息公开规定] effective date: May 1, 2008, revised in December 2010.

deliberation, investigation, and review. Following the State Council’s approach, the Supreme Court included procedural documents and other internal working documents in the exemptions when drafting the judicial interpretation of OGI Regulations. Ultimately, the Supreme Court removed that provision from the final version of the judicial interpretation of OGI Regulations due to strong opposition from the public and some legal scholars.

**Internal Working Documents as Non-Statutory OGI Exemption**

The previous inconsistencies and conflicts among OGI Regulations, rules for OGI implementation, relevant administrative and judicial interpretations provided agencies in China undue discretion in using working secrets or internal working documents as non-statutory exemptions to shield information from access. Legal scholar, Weixing Xiao, in a study of freedom of information in China, asserted that agencies once rejected OGI

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requests because those petitions for instructions, leading officials’ views, meeting minutes and information on the processes of individual petitions are internal working documents.

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1304 For example, Lianmian Kang and 25 other citizens lodged an OGI application in 2007 to Guangzhou Municipal Bureau of Labor and Social Security. The agency refused their request, and the local court upheld the denial. Both the agency and the court determined that the information sought fell into the category of internal affairs because it was a letter sent by the agency to the Ministry of Labor to request instructions for the criteria used to count dismissed employees’ total working years. This case predated OGI Regulations’ enforcement. Noticeably, the use of requests for instructions as grounds to deny access continues after May 2008. For example, on June 11, 2008, Yulai Yuan submitted an OGI request to the Anhui provincial people’s government for a letter sent by the agency for law and policy instructions concerning establishment of developmental zones and industrial parks. The agency denied the application, asserting that the information sought was pre-decisional information used to assist the agency’s handling an administrative reconsideration. Yuan sued the agency in a local court later. Weibing Xiao, Freedom of Information Reform in China: Information Flow Analysis 108 (2011); Jie Lin & Xiangyang Sun, Twenty Six Guangzhou Citizens Took Guangzhou Labor Bureau to Court [26 名市民狀告广州市勞保局], China Youth Daily, January 7, 2008, <http://zqb.cyol.com/content/2008-01/07/content_2022076.htm> (last visited November 18, 2012); Xudong Qin, An OGI Lawsuit Was Tried with the Anhui Government Being Sued [信息公开行政訴訟案開庭 安徽省政府成被告], Caijing, October 9, 2008, <http://www.caijing.com.cn/2008-10-09/110018705.html> (last visited November 18, 2012).

1305 In the early morning of May 4, 2008, Youjian Huang, Baisong Deng and three other retired workers in Hunan Province filed an OGI application to the Rucheng County people’s government for a research report made by the agency concerning restructure of the Rucheng County Water Supply Company. The agency immediately rejected the application on the ground that the research report was an internal working document used only to assist leaders’ decisions. The next day, the requesters sued the agency for failure to disclose information. Weibing Xiao, Freedom of Information Reform in China: Information Flow Analysis 109 (2011); Wenming Zhao, First OGI Lawsuit: Retired Workers Took Government to Court for Its Failure to Disclose Information [政府信息公开条例第一案：退休职工告政府信息公开], Legal Daily, May 6, 2008, <http://news.xinhuanet.com/legal/2008-05/06/content_8112790.htm> (last visited November 18, 2012).

Summary and Conclusion

This chapter examines two kinds of official information exempt from the disclosure requirements of OGI Regulations: journalistic internal reference and working secrets.

The journalistic internal reference system, established by Chinese communists in the 1930s, incorporates influences from journalism in the Soviet Union. However, origins may date from more than 1,000 years ago with the publication of China’s first internally circulated newspaper. Today, journalists from mainstream party and official media outlets prepare most internal reference materials. Journalistic internal reference materials cover a


1308 In October 2008, four companies, two National People’s Congress deputies and seven experts submitted an OGI request to The General Administration of Quality Supervision, Inspection and Quarantine for the investigation report concerning the quality of rolling mills produced and sold by the Zhengzhou Top Rolling Company. However, the agency rejected the request on the ground that the report was issued to “respond to petitions for internal research.” Weibing Xiao, Freedom of Information Reform in China: Information Flow Analysis 109 (2011); Xiaodong Zeng, General Administration of Quality Supervision, Inspection and Quarantine Declined to Disclose Investigation Report on Quality of Mills Produced by Zhengzhou Top Rolling Company [质检总局拒绝公开拓普轧机质量调查结论], China National Radio, Beijing, June 18, 2009, <http://www.cnr.cn/bgt/sytt/200810/t20081028_505135586.html> (last visited November 18, 2012).
wide range of topics and issues. Most importantly, they cover sensitive and controversial issues, such as official misconduct and corruption that regular publications would not expose. The intent is that internal reference documents are beyond the public’s purview, and transmit exclusively to leading political and governmental officials at various levels. Internal reports provide officials in the party and the government an unfiltered and uncensored version of events in China and foreign countries. They also provide leaders with insightful policy analysis and recommendations.

Journalistic internal reference plays a vital role as watchdog and think tank for Chinese politics; however the system has its costs for the society by depriving most citizens of the right to know. Although no reported cases of citizens seeking internal reference materials from agencies exist, officials may easily reject such requests for access to information in the future. Justification for rejection may be according to the grounds that the information sought coincides with the state secret exemption in OGI Regulations.

Working secrets or internal working documents are exempt, by statute, from disclosure in many FOI countries including the United States. In a sharp contrast, OGI Regulations have no provisions regarding exemptions for internal working documents or working secrets. Other relevant Chinese legal codes and rules either follow the approach of OGI Regulations or interpret the working secrets exception as an absolute non-statutory exemption. Agencies in China have used inconsistencies and conflicts among the laws to reject access to requests for instructions, research reports, leading officials’ views, meeting minutes, and information on the process of individual petitions.

Given that administrative organs in China have used working secrets to shield official information from disclosure, agencies may use internal reference in the same way
in the future. In order to ensure both maximum disclosure of information and proper functioning of administrative activities, Chinese law reformers need to include internal working documents in subsequent freedom of information legislation as a statutory exemption and clearly narrow the scope of this exemption. In order to both protect ordinary people’s right to know and guarantee social stability and cohesion, Chinese law reformers must seriously consider revising the journalistic internal reference system. Two options are apparent: One is to write internal reference into future freedom of information legislation as a statutory exemption and limit its scope. An alternative, acceptable to the political elite, is to limit the quantity of internal reference and improve its quality. In other words, news organizations should determine carefully what news should be accessible to all and what news should be restricted to a few. Only truly secret information should have classification as internal reference.
Chapter Nine: Journalistic Role in Chinese Freedom of Information

Introduction

The previous chapter examines the role of journalistic internal reference in restricting free flow of information between the government and Chinese citizens. This chapter will explore Chinese journalism’s methods of and contributions to drafting, publicizing and enforcement of OGI Regulations.

The chapter will discuss whether or not Chinese journalists contributed to formulation of OGI Regulations and the nature of those contributions. The chapter will also investigate Chinese journalists’ coverage and publicizing the freedom of information movement and the reasons for vigorous and extensive media coverage of a plethora of issues pertaining to OGI Regulations. More importantly, this chapter will assess Chinese journalists’ use of OGI Regulations to obtain official information for the purposes of news gathering and reporting. The chapter will analyze, in detail, the reasons for the limited use of the law by Chinese editors and reporters.

Role of Chinese Journalists in Formulating OGI Regulations

Investigative journalism enables the people’s right to know events, procedures and policies of, government and that right is a guarantee of freedom of information legislation. A reasonable expectation is, therefore, journalists’ advocacy for establishing FOI laws. However, unlike their American and other Western colleagues, the entire Chinese legislative process for OGI Regulations excluded journalists. According to Legislation Law passed in 2000, the State Council had the power to formulate administrative regulations in
accordance with the Constitution and laws. In drafting administrative regulations, opinions from relevant agencies, organizations, and citizens were to be heeded, and relevant forums, seminars, and hearings held. However, a database search and personal interviews show that, in drafting OGI Regulations, Chinese law reformers did not listen to opinions from journalists and news media. No Chinese reporters or editors participated actively in the formulation of the law, nor did leading professional organizations participate in the process. OGI Regulations, as discussed in Chapter Five, were elite-driven, proposed, drafted, and formulated entirely by officials and leading legal scholars.

The absence of involvement of editors and reporters in the formulation of the freedom of information laws is rare in many countries. Understandably the Chinese context differs. Freedom of information research was politically sensitive in China in the late 1990s, and many leading hard-liners in the party and the government believed that the Glasnost reform in the Soviet Union in the late 1980s contributed to the deterioration of


1311 All China Journalists’ Association, China Media Culture Promotion Association, China Newspaper Association, China Radio and TV Association, and China Internet Association are prominent industrial organizations in journalism and media in China.


1313 WEIBING XIAO, FREEDOM OF INFORMATION REFORM IN CHINA: INFORMATION FLOW ANALYSIS 43, 64-65 (2011).
that communist empire. These officials asserted that a similar nation-wide transparency reform in China would lead to the same catastrophic consequences.\textsuperscript{1314} In addition, legal infeasibility and political inappropriateness would occur if linking freedom of information with freedom of expression because of “the lack of Freedom of the Press Act and an authoritative interpretation of freedom of expression laid down in Article 35 of the Constitution.”\textsuperscript{1315} Chinese reformers thus adopted a strategy of linking OGI legislation with economic growth and informationization development.\textsuperscript{1316} This strategy decreased political sensitivity toward FOI research and “allowed the idea of FOI to be openly discussed in China.”\textsuperscript{1317} However, this strategy created an impression of journalism’ disassociation with OGI Regulations, thus marginalizing journalists’ roles promoting OGI legislation.

\textbf{Role of Chinese Journalists in Covering and Publicizing OGI Regulations}

Chinese journalists had marginal roles in formulation of OGI Regulations, but reporters have been instrumental in ensuring effective enforcement of the law. Their reporting on non-compliance with the law has created significant pressures from public opinion on agencies and forced corrections. The vigorous coverage on a wide range of issues and events related to governmental transparency contributes to wider public

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\textsuperscript{1314} \textsc{WeiBing Xiao}, \textit{Freedom of Information Reform in China: Information Flow Analysis} 40 (2011).
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\textsuperscript{1317} \textsc{WeiBing Xiao}, \textit{Freedom of Information Reform in China: Information Flow Analysis} 41 (2011).
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awareness of the law. A random Google search shows that the Chinese print media published large volumes of news stories and commentaries regarding open official information since adoption of OGI Regulations in 2007. Similar stories and critiques appear frequently on airwaves and the Internet portals. The publication Southern Weekend is an example; as “China’s most influential liberal newspaper,” the weekly publication, from May 1, 2008 to April 30, 2010, printed 129 articles concerning OGI matters. During that time, 58 percent of the weekly’s total coverage was in-depth investigative reporting (35 articles) and commentaries (40 articles) devoted to OGI.

Legal professionals are allies of journalists for covering and publicizing OGI Regulations. Apparently, legal professionals are among the most frequent requesters of governmental information under OGI Regulations. Attorneys in China normally do not rely on OGI Regulations to obtain information for their cases; instead, they rely heavily on personal connections in government to obtain needed documents. The government

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1321 WEIBING XIAO, FREEDOM OF INFORMATION REFORM IN CHINA: INFORMATION FLOW ANALYSIS 120 (2011).
discourages lawyers from becoming involved in OGI litigation;\textsuperscript{1322} however, increasing number of lawyers, law academics, and students actively use OGI legislation to access official information that is primarily in the public interest.\textsuperscript{1323} Many lawyers’ involvements in OGI requests and litigations are not for commercial gains but for educational purposes.\textsuperscript{1324} These legal actions gain wide coverage from local and national media because of their newsworthiness.\textsuperscript{1325} Publicity is possible because legal professionals and journalists successfully collaborated for the common goal of enhancing public awareness of OGI legislation.

\textsuperscript{1322} During a February 2012 telephone interview, a Beijing lawyer, who once studied at The Pennsylvania State University Law School, stated that internal policies circulated among lawyers in Beijing instructed them to avoid OGI litigations.


\textsuperscript{1325} China Transparency.org is China’s first non-profit, non-governmental, academic website focusing on OGI matters. The website maintains a comprehensive list of OGI litigation filed by information requesters over the last four years (2008 to 2012). The list is available at <http://www.chinatransparency.org/newslist.asp?classid=48> (last visited November 18, 2012).
Constant media exposure related to *OGI Regulations* promoted the public’s understanding of the law and the concept of the right to know. According to a Peking University survey conducted prior to the May 2008 enactment of *OGI Regulations*, China’s young Internet users, aged from 10 to 45, knew little about freedom of information. Among 197 respondents, 124 claimed unawareness of the promulgation, 145 admitted unfamiliarity with the key provisions in the law, and 127 said that they did not know that many other countries had adopted freedom of information laws. Apparently, subsequent research to update the data is non-existent. However, given that the Chinese media inundated citizens with constant details of OGI matters during the last four years, a safe assumption is the level of public awareness would be significantly higher for the same survey in 2012.

As examined earlier, Chinese journalists enjoy relative freedom for exposing non-compliance of agencies at various levels using *OGI Regulations* because freedom of information is no longer a politically sensitive topic in China. In addition, Central party and

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1327 Most information applicants are not highly educated professionals like lawyers, doctors, journalists, professors, or accountants. Instead, the majority of OGI requesters in China are ordinary urban residents, workers, farmers, college students, NGO employees, rights activists, and many other people of low socio-economic status. This demographic pattern indicates that *OGI Regulations* have had publication throughout Chinese society.
governmental leaders publicly announced full support for the media’s role for covering irregularities and scandals related to official transparency.1328

Another factor, equally important but widely ignored, could also help explain the freedom granted to Chinese journalists who write about OGI matters. The factor relates to the nature of China’s political system. According to typology generated by political scientist, Barbara Geddes, the world’s governments include three types of authoritarian regimes: single-party regimes such as China, military regimes such as Myanmar, and personalist/dictatorship regimes such as North Korea.1329 A theory, advanced and empirically tested by political scholar, Bogdan Popescu, argued that these three regime types allow for varying degrees of press freedom. Single party regimes normally have the freest press, personalist/dictatorship regimes have the least free media, and military regimes stand between the two.1330 The theory explains that single-party regimes are more

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1330 Bogdan G. Popescu, *Press Freedom in Non-Democratic Regimes*, paper prepared for delivery at the European Consortium for Political Research Graduate Conference, Dublin City University, Ireland, August 30-September 1, 2010, at 1 and 22,
transparent and inclusive than the other two non-democratic regimes, thus allowing for the greatest level of press freedom. The personalist/dictatorship regimes, characterized by the most severe censorship, is the result of political insulation surrounding the ruling clique. Military regimes need no censorship because journalists resort to self-censorship due to the presence of military as a “symbol of coercive power.” The vibrancy in coverage of \textit{OGI Regulations} by Chinese journalists attests to the validity of this theory. To make a stronger statement, media freedom and single-party rule are not mutually exclusive, as many scholars have assumed. In the Chinese context, single-party rule allows for meaningful journalism, although exaggerating the flexibility may be an error.

\textbf{Role of Chinese Journalists as Requesters of Governmental Information under OGI Regulations}

Chinese media reported official transparency vigorously, but their aggressive use of \textit{OGI Regulations} to access governmental information remains a question, and the response is, for practical purposes, in the negative. After media interviews,\textsuperscript{1332} database search,\textsuperscript{1333} 

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and Internet search,\(^{1334}\) the results indicate that, as of July 31, 2012, only a very small number of Chinese journalists and news organizations used OGI Regulations to request official information. A list, in chronological order for 2006 to 2012, details Chinese media professionals’ requests:

- Pin Ma is a reporter for Jiefang Daily, the official newspaper of the Shanghai Committee of the Communist Party of China. In April 2006, Ma twice vainly attempted to interview officials from the Shanghai Municipal Urban Planning Bureau for information needed for a news story. Ma submitted an application, in the name of a citizen, to the agency for the same information on April 23, 2006, two years after enactment of Provisions of Shanghai Municipality on Open Government Information.\(^{1335}\) On May 18, 2006, Ma sued

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\(^{1333}\) Searched databases were China Academic Journal Database, Beida Fabao and Westlaw China.

\(^{1334}\) Chinese-language Google search was conducted by using key words “journalists (jizhe 记者)” and “OGI Regulations (zhengfu xinxi gongkai tiaoli 政府信息公开条例).” Also examined was the list of OGI litigation filed by information requesters over the last four years (2008 to 2012) and compiled by China Transparency.org.

the agency for failure to release the information under Shanghai OGI Provisions. The Shanghai Huangpu District Court accepted the lawsuit, and Ma became the first Chinese reporter to sue the government under local OGI provisions. However, Ma withdrew the litigation on June 2, 2006 due to pressure from various parties. The episode was covered extensively by the national and local media except *Jiefang Daily*.

- On April 8, 2008, *Press Digest* editor, Ping Ma, submitted an OGI application to the Shanghai Municipal Urban Planning Bureau for the same information requested in 2006 while working as a *Jiefang Daily* reporter. The request coincided with the new *Provisions of Shanghai Municipality on Open Government Information*. Considering the released information to be self-contradictory, Ma sued the agency for a second time, but the court declined to accept his complaint. On July 8, 2008, the editor sent a request to the National Development and Reform Commission for the same information. The agency redirected the query to the Shanghai Municipal Development and Reform Commission for the information. Ma’s newspaper and the other publications in the *Jiefang Daily*

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1337 *Press Digest* (*baokan wenzhai 报刊文摘*) is a popular newspaper of the *Jiefang Daily* Newspaper Group in Shanghai.

1338 *Provisions of Shanghai Municipality on Open Government Information* (promulgated on April 28, 2008 by the Shanghai municipal people’s government (order No.2) (effective date: May 1, 2008) (amended on December 20, 2010) (order No.52).

1339 Henan Zheng, *Citizen Challenges Bureau of Urban Planning for Flawed Information Disclosure* [信息公开有瑕疵 公民较劲规划局], *PROCURATORIAL DAILY*, August 4, 2008,
Newspaper Group did not cover the application and the ensuing attempt to seek judicial remedy.

- Ling Su and her colleagues at the influential *Southern Weekend* experimented with submitting OGI requests after enactment of *OGI Regulations* in May 2008. The OGI requests, filed with 25 Bureaus of Land and Resources in 21 cities, sought relevant real estate information. Only 4 agencies approved disclosure that otherwise should have had proactive dissemination, thereby creating an approval rate of only 16 percent. The results of the experiment appeared in the newspaper to illustrate the difficulty citizens have using *OGI Regulations* for accessing information.

- On February 2, 2009, *Southern Weekend* reporter, Yongtong Su, made written request to the Ministry of Environmental Protection for an environmental impact assessment that approved construction of the PX plant in the Chinese coastal city of Zhangzhou. The newspaper covered the request and application for information in an attempt to follow up the PX plant controversy, widely reported by Chinese media.

- On March 8, 2010, 163.com auto editor, Wenjun Liu, submitted and publicized an OGI request, in the name of an ordinary citizen, with the General Administration of Quality Supervision, Inspection and Quarantine for information concerning the number of people

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killed or injured in traffic accidents due to alleged malfunctioning auto parts. Also included in the request was the number of complaints filed by Chinese purchasers against Toyota over the years and the agency’s investigation and resolutions for those complaints. Liu filed the application based on a sense of obligation to inform the public of the safety of Toyota vehicles in China, after the 2009-2011 global recall of Toyota vehicles.\textsuperscript{1342}

- On May 20, 2010, \textit{Southern Weekend} journalists lodged OGI applications with bureaus of environmental protection in 31 major Chinese cities\textsuperscript{1343} for information concerning enterprises penalized from January 2010 to May 2010 for violating environmental laws and regulations, and information for justifying the penalties. The experimental use of \textit{OGI Regulations} appeared prominently in the newspaper to demonstrate the difficulty with obtaining official information via OGI requests.\textsuperscript{1344}

\textsuperscript{1342} The agency accepted Liu’s application immediately. On April 28, 2010, the agency responded that both the number of people affected by defective auto parts and the number of auto complaints do not fall into the category of official information released according to \textit{OGI Regulations}. As for the investigation and resolution of the complaints, the agency directed the applicant to the agency’s website for relevant information. Liu did not appeal for administrative reconsideration to rectify the non-disclosure. Nor did he sue the agency. He did post the agency’s official response letter on a personal blog. Dong Dong, \textit{General Administration of Quality Supervision, Inspection and Quarantine Accepts First OGI Request for Information Concerning Toyota Recall Incident }[国家质检总局受理第一例丰田召回信息公开申请], 163.com, March 9, 2010, \texttt{<http://auto.163.com/10/0309/13/61BC5KAL000816HJ.html> } (last visited November 18, 2012); The official response letter can be found on Wenjun Liu’s personal blog, \texttt{<http://gzdongdong007.blog.163.com/blog/#m=0&t=2&c=2010-4> } (last visited November 18, 2012).

\textsuperscript{1343} They include four municipalities directly under the State Council, five capital cities in autonomous regions, and 22 provincial capital cities.

\textsuperscript{1344} Submission of OGI applications to Lhasa and Haikou failed due to technical reasons. The newspaper successfully sent the applications to the environmental protection agencies in 29 cities by telefax from the publication’s Guangzhou office. Among the 29 cities, 14 percent approved disclosure of the information requested; 14 percent denied the request;
• On July 11, 2010, *Beijing News* journalist, Bo Chen, submitted an OGI request with the Beijing Municipal Traffic Law Enforcement General Team, in the name of a Chinese citizen, for information of the number of unlicensed taxis in Beijing and the total fines levied against those illegal cabs over the years. The reporter sought to expose police officers who willfully fined taxi drivers. The whole application process appeared in the newspaper as a part of coverage of unlicensed taxis.1345

• On August 2010, *Press Digest* editor, Ping Ma, submitted an OGI application to the Shanghai Public Security Bureau Xuhui Branch. The request was for documents and records detailing certain types of public security cases received by the Branch from March 1, 2006 to December 31, 2009. All those public security cases involved incidents of beating and slightly injuring innocent individuals and represented public security cases closed 27 percent responded that they had proactively released the information requested; 45 percent did not respond at all. Four cities (Xining, Tianjin, Guiyang and Hangzhou) rejected the request for different reasons. Xining held that compilation of the information was incomplete. Tianjin maintained that the information sought was pre-decisional and deliberative and disclosure may endanger state security, public security, economic security and social stability. Guiyang insisted that the information sought involved commercial secrets, personal privacy, and the third party did not consent to disclosure. Hangzhou required the newspaper to provide a photocopy of its certificate of business registration and documents certifying its status as legal person. Duanduan Yuan & Nan Xu, 环境信息公开咋这么难 29 份信息公开申请表的遭遇, *SOUTHERN WEEKEND*, June 24, 2010, <http://www.infzm.com/content/46698> (last visited November 18, 2012).

1345 The agency rejected the request on August 4, 2010, ruling that the applicant failed to satisfy the special needs test. In other words, the information sought was irrelevant to special needs of the journalist’s production, livelihood and scientific research. The journalist did not resort to administrative appeal and judicial review to rectify the non-disclosure. Bo Chen, *Officials Respond to Allegations of “Bargaining for Reduced Fines Levied against Unlicensed Cabs”*[ 官方回应“黑车罚款还价”], *BEIJING NEWS*, August 5, 2010, <http://epaper.bjnews.com.cn/html/2010-08/05/content_133849.htm> (last visited November 18, 2012).
without adjudication and wrongdoers receiving administrative penalties. Dissatisfied with the agency's responses, Ma sued the agency, asking a local court to rule in favor of disclosure of the information. Neither Ma's newspaper nor other newspapers in the Jiefang Daily Newspaper Group covered the application and the ensuing litigation.

- In July 2011, Southern Metropolis Daily reporter, Baocheng Chen, working outside official duties, sent an OGI request, in the name of a Chinese citizen to the Ministry

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1346 On February 2, 2010, a traffic accident involved Ma’s parking and a collision with a Passat sedan. Ma, beaten and slightly injured by the angry driver of the Passat, reported the beating to the Shanghai Public Security Bureau Xuhui Branch. The agency imposed no penalties against the Passat driver. Ma sought the information to determine if the agency enforced administrative penalties laws fairly. Shuming Li, Shanghai Resident Questions Fairness of Being Beaten Without Compensation [上海市民追问“打了白打”], PROCURATORIAL DAILY, November 3, 2010, <http://news.jcrb.com/jxsw/201011/t20101103_461426.html> (last visited November 18, 2012).

1347 Upon request from the Branch, Ma rewrote the request into seven separate applications. On September 9, 2010, the agency responded that legal documents concerning public security cases, which imposed administrative penalties on wrongdoers, did not exist because the agency did not create or obtain them. On September 16, 2010, the agency responded again that it had received, from March 2006 to December 2009, a total of 14,404 public security cases, which recorded innocent persons’ beatings and slight injuries. Shuming Li, Shanghai Resident Questions Fairness of Being Beaten Without Compensation [上海市民追问“打了白打”], PROCURATORIAL DAILY, November 3, 2010,<http://news.jcrb.com/jxsw/201011/t20101103_461426.html> (last visited November 18, 2012).


1349 The journalist’s personal microblogging site can be accessed at <http://t.ifeng.com/记者陈宝成/> (last visited November 18, 2012).
of Railways for the full list of victims who died in the Wenzhou train collision. The agency confirmed receipt of the application. If the agency responded is unknown, and the newspaper did not publicize the application, but it did appear on the reporter’s personal Twitter-like microblogging site.

- In December 2011, Xing Wang, a journalist from Southern Metropolis Daily in Guangzhou, submitted OGI applications in the name of a Chinese citizen. The applications, forwarded to 32 environmental protection agencies at the central and provincial levels, requested surveillance data regarding PM2.5 and ozone density. Among all the environmental protection agencies involved, only one released partial data. The newspaper published the application process.

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1351 PM 2.5 is a term for particles less than 2.5 micrometers in diameter. Arguably, PM2.5 particles pose the greatest risk to health among all types of particles in the air. They can penetrate deeply into human lungs because of their small size. China has begun monitoring pollution indicators for PM2.5. Frequent Questions About PM2.5 Designations, EPA, Washington, D.C., <http://www.epa.gov/pmdesignations/faq.htm> (last visited November 18, 2012); Kai Guo, China Decides to Accept PM2.5, GLOBAL TIMES, December 23, 2011, <http://www.globaltimes.cn/NEWS/tabid/99/ID/689657/China-decides-to-accept-PM25.aspx> (last visited November 18, 2012).

1352 Submission of applications to 12 provincial-level agencies failed due to technical reasons, submission of 20 applications was successful. As of January 10, 2012, the reporter received responses from the Ministry of Environmental Protection and 10 other relevant agencies at the provincial level. The response rate was 55 percent. Among all 11 agencies that responded, only the Shanghai Municipal Bureau of Environmental Protection released the average density data for PM 2.5. Xing Wang, Experiment of OGI Applications for PM2.5 Data [公开 PM2.5 数据的申请试验], SOUTHERN METROPOLIS DAILY, January 11, 2012, at AA33, <http://gcontent.oeee.com/f/fe/ffeed84c7cb1ae7b/Blog/7e7/07d33d.html> (last visited November 18, 2012).
On April 1, 2012, Fuqiang Gao, an editor of *Rural Women* in Beijing, sent an OGI request to the Wei County Civil Affairs Bureau in Hebei Province for a list of low-income rural families who receive monthly cash assistance. The agency responded on May 9, 2012 that Gao could visit the agency to personally examine the document; but prohibited photocopying the document or removing a photocopied file. Gao sued the agency on May 10, 2012 for its failure to comply with *OGI Regulations*. Neither Gao’s magazine nor the periodical’s parent company, *China Women Daily* covered the application and the ensuing lawsuit.

Over the last four years, *Caijing* journalists lodged three to four OGI requests with various agencies. The prestigious financial news magazine has a reputation in China for investigative journalism. Its journalist once submitted an application to the State Council Information Office for the official schedule for restructuring the website of *People’s Daily* and converting the website to a publicly-traded company. The agency denied the request.

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1353 *Rural Women* is a magazine affiliated with *China Women Daily* in Beijing.


1356 Article 26 of *OGI Regulations* provides that official agencies shall provide the requested information in the form required by the applicant. *OGI Regulations 2007*. Art. 26.
on the grounds that the information sought has an exemption from disclosure.\textsuperscript{1357} \textit{Caijing} did not cover the OGI applications of its journalists.\textsuperscript{1358}

**Reasons for Limited Use of \textit{OGI Regulations} by Chinese Journalists to Access Governmental Information**

The previous examples demonstrate that Chinese reporters and editors do occasionally use \textit{OGI Regulations} to obtain documents from the government. While, some reporters have resorted to actions in court, such reporters and editors are few. In the United States and many other Western countries, “[t]he most frequent, experienced, and at times frustrated, users of FOI are journalists and media organizations. It can be argued that FOI needs journalists to realize its potential as a political accountability tool and journalists need FOI to fulfill their role[s] as the fourth estate, scrutinizing societal power in general and political power in particular.”\textsuperscript{1359} Unfortunately, unlike their American and Western counterparts who are frequent seekers of government-held documents, journalists in China are definitely not frequent OGI requesters of information. The use of administrative and judicial reviews for rectifying non-compliance with \textit{OGI Regulations} is even more uncommon among Chinese journalists.

\textsuperscript{1357} \textit{Caijing} and other media did not publicize those OGI applications. The information is the result of a September 11, 2011 telephone interview with the editorial department director of a prestigious financial publication in China.

\textsuperscript{1358} No relevant stories could be found on the website of \textit{Caijing} (http://www.caijing.com.cn/) despite persistent efforts for searching.

The data compiled demonstrates that, from May 2008 to December 2011, reporters and editors originated a total of 84 OGI requests in China. During the same period, Chinese citizens, legal persons, and other organizations promulgated a total of 996,469 OGI requests. This indicates that the percentage of journalist-filed OGI requests is extremely low. The same period recorded a total of 6,157 administrative reconsideration cases and 3,435 OGI litigations in China. However, from May 2008 to December 2011, journalists in China filed zero administrative appeals and only one OGI lawsuit. The situation is not far better even if viewed with a much longer time frame. Within the last 10 years, beginning in 2002 to July 2012, journalists were plaintiffs in only four recorded OGI litigations. The first litigation occurred in 2006, ending with withdrawal of the case. The second occurred in 2008 and ended with the court dismissed the complaint. The third in

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1360 The compiled data are according to annual reports of OGI activities (2008-2011) made by central agencies and all provincial people's governments.


and the fourth\textsuperscript{1365} in 2012 remain pending litigations. Filing of all four litigations are in the names of Chinese citizens, and currently no filings of OGI lawsuits represent interests of journalists or media outlets. In addition, unlike American journalists who use FOI requests to produce award-winning investigative reports, all current use of the freedom of information law in China by journalists focused on official agencies’ enforcement of the law. Media exposure of non-compliance of the law itself is important; however, more significant is media exposure of official mismanagement, scandals, and corruptions found through examination of volumes of governmental documents and records obtained via OGI requests.

A migrant worker in Beijing said to a \textit{Caixin} journalist, “Laws are a big bell made by a country. If you don’t ring it, it will never ring itself!”\textsuperscript{1366} Sixin Wang, a media law professor from the Communication University of China in Beijing, said in an interview with \textit{The Wall Street Journal} that \textit{OGI Regulations} can be a “sword” for Chinese journalists.\textsuperscript{1367} It is worthwhile to ask why Chinese editors and reporters do not ring the “bell” harder. It is worthwhile to ask why Chinese editors and reporters do not use the “sword” more frequently. The reasons for the insufficient use of the \textit{OGI Regulations} by news media outlets to access information are multifold.


OGI Regulations have been enforceable for only four years, and many reporters are still not fully aware of the law's magnitude, especially among journalists from local media and underdeveloped regions.\textsuperscript{1368} Obtaining official information via the lengthy process of filing OGI requests is time-consuming, and consequently, ill-suited for reporters with restrictive deadlines.\textsuperscript{1369} Another factor that limits journalistic use of OGI Regulations is the low percentage of OGI requests approved by official agencies\textsuperscript{1370} and the remote possibility

\textsuperscript{1368} Random email and telephone interviews from June 2012 to November 2012 to measure Chinese journalists' use of OGI Regulations showed that most reporters from national media in Guangzhou, Beijing, and Shanghai have familiarity with OGI Regulations; whereas, many reporters from local media in Hubei and Sichuan Provinces have no familiarity.

\textsuperscript{1369} The managing editor of a prestigious financial publication known for investigative journalism in China stated in a September 11, 2011 telephone interview that journalists in his newsroom have occasionally used OGI Regulations. But most of his reporters prefer to obtain official information from other sources because the OGI approach is too slow.

\textsuperscript{1370} As discussed in Chapter Seven, the numbers compiled from annual reports of OGI activities of central and provincial-level agencies (2008-2011) indicate that the majority of OGI requests submitted to provincial and local agencies gained approval. However, those numbers deserve cautious interpretation because the raw data arise from official agencies, not from independent sources. The OGI request approval rate provided by research organizations and news media such as the China Academy of Social Science, Peking University, Southern Weekend, and Southern Metropolis Daily is far lower. Those independent sources obtained the approval rate by sending staff to apply for information under the guise of ordinary requesters. Those rates are likely more reliable. For example, the China Academy of Social Sciences conducted an OGI application experiment in 2010 and found that the OGI request approval rate was 6.7 percent for central agencies and 4.6 percent for local agencies. Peking University Center for Public Participation Studies and Supports has not released any approval rates, but its staff reportedly faced frequent complaints when applying for information from all agencies. Southern Weekend conducted an OGI application experiment in 2010 and found that the approval rate was 41 percent. The Southern Metropolis Daily experiment in 2011 found that the corresponding rate was 5 percent. The approval rate may be even lower if requesters are journalists. Governmental agencies may reject disclosure, claiming that the journalists failed to satisfy the test of special needs or argue that the materials sought might be used for sensationalism. Hongqing Duan, How Chinese Media Shall Push Forward Open Government Information [中国媒体如何推进信息公开], 9 China Reform (2011); Xing Wang, Experiment of OGI
of succeeding in OGI litigation.\textsuperscript{1371} The prospect of failure in obtaining the materials sought convinces journalists that the information request is useless. The limited use of \textit{OGI} Regulations to access information may also have an explanation from the changing prototype of the Chinese news media. As a newly emerging model that directly challenges the dominance of party journalism, professional journalism has created favorable conditions for the use of \textit{OGI Regulations}. However, breathing space available to professional journalism remains limited in China.\textsuperscript{1372} Lack of support from newsrooms and applications for PM2.5 data [公开 PM2.5 数据的申请试验], \textit{Southern Metropolis Daily}, January 11, 2012, at AA33, <http://gcontent.oeee.com/fc/fe/ffeedback84c7cb1ae7b/Blog/7e7/07d33d.html> (last visited November 18, 2012); Mingyan Wei & Shaofeng Guo, \textit{OGI Regulations Still Encounter Implementation Bottlenecks Four Years after Enforcement} [信息公开条例实施 4 年仍遭执行难], \textit{Beijing News}, May 15, 2012, <http://www bjnews com cn/news/2012/05/15/199113.html> (last visited November 18, 2012).

\textsuperscript{1371} As discussed in Chapter Seven, judicial review is normally ineffective for rectifying non-disclosure of information. The chance of winning OGI litigation is even slimmer if the plaintiffs are journalists. Zhengjun Zhao, an ordinary citizen in Zhenzhou City, Heinan Province, filed 12 OGI lawsuits since May 2008 when upon enactment of \textit{OGI Regulations}. His success rate was high: nearly 60 percent. Among the 12 litigations he filed, he won 7, lost 2 and withdrew 3. Zhao is fortunate, unlike most reporters, such as \textit{Jiefang Daily} journalist, Pin Ma. As mentioned earlier in this chapter, Ma filed several OGI litigations and won none. Changrong Qu, \textit{From Zero to 60 Percent: Citizen Zhengjun Zhao’s Journey to Protect His Right to Know} [从 0 到 60%：公民赵正军的“公开”维权路], \textit{People’s Daily}, May 5, 2009, <http://cpc people com cn/GB/64093/64387/9237160.html> (last visited November 18, 2012).

\textsuperscript{1372} As Chinese media are moving toward liberalization, commercialization, industrialization, technological innovation, and professionalism since the 1980s, professional journalism has emerged as a new paradigm and a direct competitor to the dominant party-journalism model. Market-oriented metropolitan newspapers exemplify professional journalism; whereas, party organs exemplify party journalism. The two journalistic models embrace sharply different journalistic values and practices. Since they are much less censored than party organs, metropolitan dailies have greater involvement in investigative journalism, thus creating a need for information obtained through filing OGI requests. Both the random interviews and the examination of OGI articles published by
media attorneys also contributes to the reluctance of journalists to use the law for access to information.\textsuperscript{1373}

One of the more important reasons for media’s limited use of OGI Regulations for information access, however, is the lack of legal protection for Chinese journalists’ right to gather and publish news. A journalist would not seek information via OGI requests in the first place, knowing in advance of the application that the censors would consider the information inappropriate for public view.

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Chinese media confirm this speculation. Most media outlets that used OGI Regulations since 2002 are metropolitan publications. A People’s Daily journalist disclosed no need for journalists at his newspaper to apply for information via OGI requests because information released through official meetings and websites is sufficient. He admitted that the information released through these two channels is far from sufficient for market-oriented metropolitan newspapers. Zhongdang Pan & Joseph Man Chan, Assessing Media Exemplars and Shifting Journalistic Paradigms: A Survey Study of China’s Journalists, paper presented at the annual meeting of International Communication Association, San Diego, CA, May 23, 2003, at 1-54. Communication scholar Yuezhi Zhao documented in her two books, in great detail and depth, the change of Chinese media and communication environments during the post-Mao reform era. YUEZHI ZHAO, COMMUNICATION IN CHINA: POLITICAL ECONOMY, POWER, AND CONFLICT (2008); YUEZHI ZHAO, MEDIA, MARKET, AND DEMOCRACY IN CHINA: BETWEEN THE PARTY LINE AND THE BOTTOM LINE (1998).

\textsuperscript{1373} Pin Ma is a good case in point. The ambitious Jiefang Daily journalist applied for governmental information several times and brought agencies to court several times. Unfortunately, his persistent use of OGI Regulations was not career enhancing. His newspaper did not publish any articles to support his applications. To the contrary, his newspaper persuaded him to withdraw the 2006 lawsuit because of pressure the publication received from powerful party and official censors. The newspaper demoted him, transferred him from Jiefang Daily to another much less prominent sister newspaper, Press Digest. His newspaper also rejected his application for a senior professional title. The situation for Ma would improve if he could obtain free legal assistance from media attorneys and public interest organizations, similar to American colleagues. Unfortunately, media attorneys in China are scarce; public interest groups specializing in providing free-of-charge legal services to media organizations do not exist in China. Hongqing Duan, How Chinese Media Shall Push Forward Open Government Information [中国媒体如何推进信息公开], 9 CHINA REFORM (2011).
The Chinese journey to freedom of expression and freedom of the press is clearly less smooth than the journey to freedom of information. Modern Chinese media originated in the early 1900s after the Qing Dynasty collapsed. Enactment of the *Publishing Act* occurred in 1930, amended in 1937, followed by the *Press Act* in 1943. Kai-shek Chiang and his Kuomintang regime used both laws to suppress freedom of expression and the press, however, with lackluster enforcement. After Zedong Mao and his communist comrades created the People’s Republic of China, Chinese political elite included concepts of freedom of expression and the press into the *1954 Constitution*. The same aspirations appear in the subsequent *1975 Constitution*, *1978 Constitution* and *1982 Constitution*.

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1377 Article 87 of the *1954 Constitution* proclaimed that “[c]itizens of the People’s Republic of China enjoy freedom of speech, freedom of the press, freedom of assembly, freedom of association, freedom of procession and freedom of demonstration. To ensure that citizens can enjoy these freedoms, the state provides the necessary material facilities.” The *Chinese Constitution 1954*. Article 87 (adopted in 1954 and repealed by *1975 Constitution*).

1378 Article 28 of the *1975 Constitution* provided that “Citizens enjoy freedom of speech, correspondence, the press, assembly, association, procession, demonstration and the freedom to strike, and enjoy freedom to believe in religion and freedom not to believe in religion and to propagate atheism.” (adopted in 1975 and repealed by *1978 Constitution*).

1379 Article 45 of the *1978 Constitution* provided that “Citizens enjoy freedom of speech, correspondence, the press, assembly, association, procession, demonstration and the freedom to strike, and have the right to speak out freely, air their views fully, hold great debates and write big-character posters.” (adopted in 1978 and repealed by the *1982 Constitution*).
Constitution. Under Mao’s leadership, the twin freedoms of expression and the press never reached practice, since the party established a Soviet Union-like media system characterized by complete party control. During the Cultural Revolution (1966-1976), the Constitution became a worthless piece of paper. The Constitution failed to protect Chinese President Liu Shaoqi from illegal imprisonment, torture, and death. Many reporters, purged by the authorities for being rightists, investigated and imprisoned without the due process of the law, committed suicide.

Legal protections for journalists became stronger after Mao died and Xiaoping Deng emerged as the leader of the country in the late 1970s. As a part of Deng’s effort to reestablish a legal system severely damaged by Mao, journalists in China began reflecting

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on the lessons of the Cultural Revolution and the experiences of the rule of law in journalism in Western countries. Journalists, scholars, and the National People's Congress (NPC) deputies began proposing the enactment of the Freedom of the Press Law in the early 1980s. In 1980, many articles advocating greater rule of law in journalism appeared in leading periodicals. Since the common notion was that judges could not cite constitutional provisions an authority in China, Freedom of the Press Law would be vital for translating ideals in Article 35 of the 1982 Constitution into reality. The law would also allow judicial remedy for violations of journalists’ legal rights.

In 1983, some NPC deputies submitted proposals to the first session of the sixth National People's Congress, calling on the NPC to “legislate the Freedom of the Press Law of the People's Republic of China when the opportunities are ripe.” In January 1984, The Central Propaganda Department of the Chinese Communist Party issued a report for

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1385 Jun Wang, professor of media law at the Communication University of China, said in an email interview with the current researcher that Chinese scholars began to study media law in the early 1980. They studied media law because they were proposing the formulation of PRC’s first Press Law.


1388 Many NPC deputies were full-time journalists. Unlike Western congressmen, Chinese legislators work only on a part-time basis and most of them have full-time employment.

instructions on the drafting of the *Press Law*. The CPC Secretariat and the Chairman of the NPC Standing Committee soon approved the report.\(^{1390}\) In May 1984, the Press Law Research Institute, established in Beijing under the auspices of the NPC and the Chinese Academy of Social Sciences, produced a draft of the *Freedom of the Press Law* in 1985. In 1986, Shanghai produced a local version of the press law known as *Provisions of the Shanghai Municipality on Journalism Work*. In 1987, the Administration of Press and Publication,\(^{1391}\) created in Beijing, authored another draft of the *Freedom of the Press Law* appearing in early 1989.\(^{1392}\)

Among the three drafts of the *Freedom of the Press Law*, the draft produced by the Press Law Research Institute is the most comprehensive and progressive for guaranteeing journalistic rights. The draft, after three revisions, was complete in 1988. Article 1 of the third version provides that freedom of the press means the right of the citizens to publish and obtain news via news media and the right of citizens to enjoy and exercise freedom of expression and publication. Article 7 provides that citizens and social organizations enjoy the right to criticize the government and public officials. Article 8 provides that the state may not engage in any forms of censoring the content of news media, except when the country is in a state of general mobilization. Article 12 provides that citizens’ groups and


\(^{1391}\) The Administration of Press and Publication is a vice ministerial-level administrative agency directly under the supervision of the State Council. It is responsible for regulating and distributing news, print and Internet publications in China. Renamed the General Administration of Press and Publication in 2001, its upgraded administrative rank became ministerial-level.

natural persons may establish newspapers and periodicals. Article 22 provides that news media can make editorial judgments, independently, without the need for approval from any individual or organization outside the news organization. News gathered by the journalist may arrive at a news organization without undue interception. Individuals or organizations may not obstruct, threaten, persecute, or endanger journalists who are fulfilling their professional duties.\footnote{1393}

Although conservative hardliners in the party strongly opposed to the passage of the \textit{Press Law},\footnote{1394} Zi Yang Zhao and many reform-minded leaders supported the idea of \textit{Freedom of the Press Law}. However, coincidentally, the 1989 Tiananmen Square incident


\footnote{1394} Some high-ranking officials in the party strongly opposed enactment of the \textit{Freedom of the Press Law}. They argued that the Press Act led to the breakdown of many regimes such as Chiang Kai-shek's rule in Mainland China, the former Soviet Union and former Eastern European communist countries. Party hardliners also argued that the \textit{Freedom of the Press Law} would displace various propaganda departments. Jiwei Hu, \textit{The Hardships and Misfortunes in the Formulation of the First Press Law in China} [制定中国第一部新闻法的艰辛与厄运], Duannancaobao[断烂曹报] Blog, August 7, 2001, \textit{available at} \url{http://www.bullogger.com/blogs/clx/archives/81870.aspx} (last visited November 18, 2012).

\footnote{1395} As the party general secretary in the late 1980s, Zhao was very supportive of political reform including greater rule of law in journalism. One day during the Spring Festival in 1989, Zhao invited one of the leading framers of the \textit{Press Law} to his office. The two discussed formulation of \textit{Freedom of the Press Law} for a whole morning. Jiwei Hu, \textit{The Hardships and Misfortunes in the Formulation of the First Press Law in China} [制定中国第一部新闻法的艰辛与厄运], Duannancaobao[断烂曹报] Blog, August 7, 2001, \textit{available at} \url{http://www.bullogger.com/blogs/clx/archives/81870.aspx} (last visited November 18, 2012).
occurred, unexpectedly, just when the three drafts of *Freedom of the Press Law* were ready for submission to the State Council and the NPC Standing Committee for review. The gunshots on the Tiananmen Square in the early morning of June 4, 1989 not only killed student demonstrators but also killed *Freedom of the Press Law* prematurely.

Since the 1989 Tiananmen Square incident, legislation of *Freedom of the Press Law* has stalled. Although *Freedom of the Press Law* appears in the legislative plan’s agenda of the eighth National People’s Congress Standing Committee, the law-making process lost momentum. In March 1998, 33 NPC deputies submitted a proposal to the NPC, calling on the speedy formulation of *Freedom of the Press Law*. In December 1998, The Chairman of the NPC Standing Committee, Li Peng, said during an interview, that China would formulate a press law that is consistent with Chinese national conditions. Beginning in 2003, NPC deputies have submitted proposals for the establishment of *Freedom of the Press Law* almost every year. In 2008, *People’s Daily* published an article urging relevant agencies

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to speed work on formulating the long-delayed *Freedom of the Press Law*.\(^{1398}\) Despite all these efforts, no indications exist that the law will become a reality in the near future.

Limitations to press freedom in China are due to a lack of *Freedom of the Press Law*. Several measures are available to quantify a country’s press freedom.\(^ {1399}\) Freedom House press freedom score is a widely used indicator of press freedom because it is the “most comprehensive data on global media freedom available.”\(^ {1400}\)

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\(^{1400}\) Countries receive scores from 0 (best) to 100 (worst) on the basis of a set of 23 methodological questions, divided into three subcategories: legal environment, political influences, and economic pressure. For each question, a lower number of points coincides with a more free situation, while a higher number of points represents a less free environment. *Freedom of the Press*, Freedom House, Washington D.C.,
scores have constantly ranked the United States (see Table 9-1) as one of the most “free” countries in terms of press freedom and rated China as one of the least free. The scores for Chinese press freedom (see Table 9-2) is so low that it trails closely behind North Korea (see Table 9-3) and Cuba (see Table 9-4), two communist regimes widely considered in the West as highly authoritarian.  

Among the eight non-democratic regimes with freedom of information laws, China again ranks at the bottom in terms of each country's press freedom for the year of enactment of the freedom of information legislation (see Table 9-5).

<table>
<thead>
<tr>
<th>Year</th>
<th>Legal Environment</th>
<th>Political Environment</th>
<th>Economic Environment</th>
<th>Total Score</th>
<th>Freedom Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>5</td>
<td>8</td>
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<tr>
<td>2009</td>
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<td>8</td>
<td>5</td>
<td>18</td>
<td>Free</td>
</tr>
<tr>
<td>2010</td>
<td>5</td>
<td>8</td>
<td>5</td>
<td>18</td>
<td>Free</td>
</tr>
<tr>
<td>2011</td>
<td>4</td>
<td>8</td>
<td>5</td>
<td>17</td>
<td>Free</td>
</tr>
<tr>
<td>2012</td>
<td>3</td>
<td>10</td>
<td>5</td>
<td>18</td>
<td>Free</td>
</tr>
</tbody>
</table>


1401 The degree to which each country permits the free flow of news and information determines the classification of its media as Free, Partly Free, or Not Free. Countries scoring 0 to 30 have Free media; 31 to 60, Partly Free media; and 61 to 100, Not Free media. Freedom house began to compile press freedom scores in 1980, with scores compiled annually. The four tables list press freedom scores for only 2008 to 2012 because the Chinese OGI Regulations have had enforcement only since 2008. Also including all the years in the tables is infeasible. Freedom of the Press Methodology, Freedom House, Washington, D.C.,<http://freedomhouse.org/images/File/fop/2010/Methodology2010--final5May10.pdf> (last visited November 18, 2012).
<table>
<thead>
<tr>
<th>Year</th>
<th>Legal Environment</th>
<th>Political Environment</th>
<th>Economic Environment</th>
<th>Total Score</th>
<th>Freedom Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>28</td>
<td>35</td>
<td>22</td>
<td>85</td>
<td>Not Free</td>
</tr>
<tr>
<td>2009</td>
<td>28</td>
<td>34</td>
<td>22</td>
<td>84</td>
<td>Not Free</td>
</tr>
<tr>
<td>2010</td>
<td>28</td>
<td>34</td>
<td>22</td>
<td>84</td>
<td>Not Free</td>
</tr>
<tr>
<td>2011</td>
<td>29</td>
<td>34</td>
<td>22</td>
<td>85</td>
<td>Not Free</td>
</tr>
<tr>
<td>2012</td>
<td>29</td>
<td>34</td>
<td>22</td>
<td>85</td>
<td>Not Free</td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th>Year</th>
<th>Legal Environment</th>
<th>Political Environment</th>
<th>Economic Environment</th>
<th>Total Score</th>
<th>Freedom Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>30</td>
<td>39</td>
<td>29</td>
<td>98</td>
<td>Not Free</td>
</tr>
<tr>
<td>2009</td>
<td>30</td>
<td>40</td>
<td>29</td>
<td>99</td>
<td>Not Free</td>
</tr>
<tr>
<td>2010</td>
<td>30</td>
<td>40</td>
<td>29</td>
<td>99</td>
<td>Not Free</td>
</tr>
<tr>
<td>2011</td>
<td>30</td>
<td>38</td>
<td>29</td>
<td>97</td>
<td>Not Free</td>
</tr>
<tr>
<td>2012</td>
<td>30</td>
<td>38</td>
<td>29</td>
<td>97</td>
<td>Not Free</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Country</th>
<th>Legal Environment</th>
<th>Political Influences</th>
<th>Economic Pressure</th>
<th>Total Score</th>
<th>Press Status a</th>
</tr>
</thead>
<tbody>
<tr>
<td>China (2008)</td>
<td>28</td>
<td>35</td>
<td>21</td>
<td>84</td>
<td>Not Free</td>
</tr>
<tr>
<td>Pakistan (2002)</td>
<td>15</td>
<td>26</td>
<td>16</td>
<td>57</td>
<td>Partly Free</td>
</tr>
<tr>
<td>Angola (2002)</td>
<td>21</td>
<td>33</td>
<td>25</td>
<td>79</td>
<td>Not Free</td>
</tr>
<tr>
<td>Zimbabwe (2002)</td>
<td>26</td>
<td>34</td>
<td>23</td>
<td>83</td>
<td>Not Free</td>
</tr>
<tr>
<td>Russia (2010)</td>
<td>24</td>
<td>33</td>
<td>24</td>
<td>81</td>
<td>Not Free</td>
</tr>
<tr>
<td>Uzbekistan (2002)</td>
<td>26</td>
<td>36</td>
<td>22</td>
<td>84</td>
<td>Not Free</td>
</tr>
<tr>
<td>Azerbaijan (2005)</td>
<td>23</td>
<td>27</td>
<td>22</td>
<td>72</td>
<td>Not Free</td>
</tr>
<tr>
<td>Tajikistan (2002)</td>
<td>29</td>
<td>27</td>
<td>24</td>
<td>80</td>
<td>Not Free</td>
</tr>
</tbody>
</table>

Table 9-5: Freedom House Scores for Press Freedom of Eight Non-Democratic Countries with FOI Laws for the Year when the Law Became Effective

Although freedom house scores seem unable to capture the subtle change in a country’s media industry on a yearly basis, they do reflect, in some way, the poor status of journalists’ rights in China. Largely due to the lack of Freedom of the Press Law, the Chinese government has the discretion to use party directives and rules to suppress the freedom of the media in news reporting.\(^{1402}\) Propaganda departments at various levels of the party

bureaucracy formulate and enforce those directive and rules. Since those directives and rules are vague, censors from propaganda departments enjoy wide latitude for restricting the flow of any information they dislike. A common notion is that China is


1404 The Central Propaganda Department formulated many party rules and directives. For example, in July 1987, the Central Propaganda Department, CPC Foreign Propaganda Small Leading Group and Xinhua News Agency issued a joint opinion, which provides that news media adhere to the principle of being conducive to social stability, stable economic development, smooth operation of reform, and open to publishing articles on sensitive social issues and major public emergencies or incidents. All the important numbers and key facts about those issues and incidents are to remain unpublished until verified and approved by relevant official agencies. In January 1989, the Central Propaganda Department issued a notice, which provided that news media ask for instructions from the State Council leading officials before journalists report on major emergencies or incidents. Normally, only news media outlets at the central level may report on those emergencies or incidents. Xinhua News Agency has exclusive right to cover those emergencies or incidents whenever the situation warrants. In August 1994, the General Office of the CPC Central Committee and the General Office of the State Council issued another notice, which reaffirms the spirit of the January 1989 notice. In addition, the new notice provides that the CCP Office of Foreign Propaganda coordinate foreign audience-intended news coverage of emergency incidents. Xinhua News Agency is the only domestic news organization that can report on those incidents. Other news media outlets are not to report those incidents without proper prior authorization from relevant official agencies. From the middle of the 1990s to the present, party and governmental censors have changed their methods of circulating orders and directives. Similar orders and directives are no longer printed and circulated in party and official documents and files. Instead, most such orders and directives transmit through telephone calls or small internal meetings. News media normally receive a few telephone calls from party and governmental propaganda officials for instructions for reports’ contents. Tingjun Wu & Changyong Xia, *History and Status Quo of Crisis Communication in China* [我国公共危机传播的历史回顾与现状分析], 6 *Journal of Modern Communication* 32 (2010).

1405 *People’s Daily* published, in 2005, an interview with an American writer and investment banker. Editors’ enthusiasm for this interview caused its prominent placement in the paper and they planned an award for the reporter in recognition of his outstanding work. However, one official from the Central Propaganda Department News Reading and Evaluation Small Group was highly critical of this article. He wrote a letter to the Department head and forwarded the letter to *People’s Daily* for censure. After the
“cautiously but resolutely” on the road to media freedom. However, given the status of media freedom in China, the continuing current state of languidness among journalists in China in terms of using OGI Regulations for quality news reporting and writing, would not be surprising. Above all, journalists would not seek information via filing OGI requests knowing in advance, through the slightest indication, that the information pursued would not appear in print.

**Summary and Conclusion**

This chapter examines the role of journalists in freedom of information in China. Unlike American journalists, as examined in Chapter Three, who played a pivotal role in proposing, formulating, and using freedom of information legislation, Chinese journalists had no involvement in the recommendation and formulation of OGI Regulations. Chinese law reformers delinked freedom of information from freedom of expression and the press investigation, the newspaper editors insisted that the Propaganda Department was inappropriately concerned and declined to punish the author. This incident reflects that the severity of punishment imposed by the party on politically incorrect journalists is on the decline. However, the incident also exposes the truth that party directives and rules on journalism are normally vague and overly broad. They can be interpreted from many perspectives. Even senior editors in party organs may not easily distinguish what is publishable from what is off limits. According to China specialists Jonathan Hassid and Perry Link, the Central Propaganda Department uses uncertainty intentionally as a strategy to frighten news media into submission. Hassid said that “…without clear guidelines on every single topic or story, and with China’s subtly shifting political winds, even long-time journalists can often get in trouble for stories they and their editors thought were acceptable or that had gone unnoticed in the past.” Jonathan Hassid, *Controlling the Chinese Media: An Uncertain Business*, 48 ASIAN SURVEY 414, 423 (2008); Perry Link, *China: The Anaconda in the Chandelier*, NEW YORK REVIEW OF BOOKS, April 11, 2002, <http://www.nybooks.com/articles/15258> (last visited November 18, 2012).

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and convinced leaders that promoting freedom of information would contribute greatly to economic growth and development of informationization. This strategy, although rendering freedom of information research politically acceptable in the late 1990s, marginalized the role of journalists in the drafting of the law.

This chapter also finds that Chinese editors and reporters played a much more prominent role in covering and publicizing *OGI Regulations*. Constant media coverage of *OGI Regulations* promoted the public’s understanding of the law and the level of public consciousness of the concept of the right to know. Vibrant media exposure of non-compliance of *OGI Regulations* created significant pressure on administrative organs that ignore legal obligations to exercise power transparently. Freedom of information is no longer a politically sensitive topic, which led journalists in China to cover official transparency issues and vigorously expose irregularities. Also, single-party rule does not completely preclude media freedom because transparency and inclusivity exist, compared to all authoritarian regimes.

Of course, overestimating media freedom in single-party countries is erroneous. Freedom House scores show that China is one of the least free countries in terms of press freedom, attributable to many factors. One of the most important is the lack of *Freedom of the Press Law* in China. Although Chinese reformers expended great effort to formulate a law to protect the rights of journalists to gather and publish news, the law died in infancy amid political upheavals in the late 1980s. Without strong legal protection, meaningful journalism encounters heavy suppression from censors in propaganda departments at various levels. This chapter concludes that lack of strong legal protections for press freedom contributes to the limited use of *OGI Regulations* among Chinese journalists. Most
Chinese citizens do not exercise their right to know in a personal and direct way. They expect the news media to keep them informed about what the government is doing or what the government is hiding. Chinese journalists should use *OGI Regulations* more vigorously to inform themselves and ultimately inform their audiences and viewers - the public.\textsuperscript{1407}

\textsuperscript{1407} A Chinese scholar on FOI, Aijun Lin, argued that Chinese mass media should play a major role in establishing and improving the FOI system in China. According to Lin, the Chinese news media does not exist to serve image building of the government, but to keep an eye on the government so that government information, both positive and negative, could be disseminated in a timely and effectively manner. *Aijun Lin, Legal Protection for the Right to Know [知情权的法律保障] 123-26 (2010).*
Chapter Ten: Recommendations for Chinese Law Reformers (Conclusion)

Introduction

This chapter will conclude an extensive exploration and summarize all the major points covered in the previous nine chapters, identify major research findings, provide suggestions and recommendations for Chinese law reformers, and reiterate contributions to the existing literature. The chapter will also acknowledge the research’s limitations and suggest possible directions for future research on the Chinese freedom of information. The end of this chapter will list a comprehensive bibliography.

Recapitulation of Research

In Chapter One, this research introduces the topic: the legal right of access to government-held information in the People's Republic of China. The explanation includes the rationale for the topic, the significance of the subject, the scope of the research, and the methodologies employed. The chapter lists several relevant research questions that the study addresses, and summarizes the key points of the subsequent nine chapters.

Chapter Two examines all the major theories that form legal and theoretical frameworks for this study. The theories considered are the freedom of expression theory, the right to know theory, democratic political theory, the checking value of First Amendment theory, four theories of the press, and democratization theories. Consideration of the first four theories represents the broad base of Western concepts of freedom of information. Examination of the four theories of the press is useful to conceptualize Chinese mass media that plays a key role in either promoting or stifling the free flow of information. The democratization theories examined provide strong theoretical rationales and convincing empirical data to quantify China as an authoritarian regime. A thorough
literature review identified significant gaps in existing literature regarding Chinese freedom of information.

Chapter Three considers the origins and development of freedom of information laws from a global perspective. The chapter examines the genesis of the world's first FOI law in Sweden and the spread of the concept of freedom of information to more than 90 countries. The discussion identifies four categories of FOI countries and four major patterns and trends in the worldwide expansion of FOI laws. Specifically, the rise of freedom of information in the United States represents the baseline example that other countries followed. The chapter inspects how U.S. journalists and other sectors worked together in making the country's federal freedom of information law possible.

Chapter Four traces the historical development of over 4000 years of governmental secrecy and transparency in China, beginning with the Xia Dynasty and ending in 1976 when Chairman Zedong Mao died. The chapter examines the influence of ancient Chinese schools of thought, such as Confucianism and Legalism for providing philosophical and ideological rationales for governmental secrecy and transparency.

Chapter Five thoroughly examines the gradual and incremental legislative movement toward the final passage of Chinese OGI Regulations in 2007. The transparency movement began in rural areas in the early 1980s when Xiaoping Deng was the supreme leader of the country. The movement accelerated in the 1990s and the early 2000s under the subsequent party leadership of Ziyang Zhao, Zemin Jiang and Jintao Hu. The chapter also explores the rationales for the rise of freedom of information in China.

Chapter Six analyses the statutory language of OGI Regulations, comparing the law with international best practices and other relevant Chinese legal documents. The chapter
evaluates the scope and efficacy of *OGI Regulations* in areas widely recognized as necessary for most FOI legislation: legal standing, legislative purpose, types of organizations and agencies covered, identification of accessible information, affirmative publication, identity requirements for inquirers, fees for access, time limits for responses, exemptions, appeals and oversight, sanctions, E-FOI, and whistle blowing.

Chapter Seven examines implementation of *OGI Regulations* in terms of both proactive and reactive disclosure of governmental information in China. Based on the data gathered from annual reports of OGI activities (2008-2011) and alternative data provided by think tanks, universities and news media outlets, the investigation reveals strengths and weaknesses of proactive disclosure and reactive disclosure and the reasons for those characteristics.

Chapter Eight examines two types of official information that are, for all practical purposes, exempt from the disclosure requirements of *OGI Regulations*: internal working documents and journalistic internal reference. Administrative organs in China have used internal working documents to shield official information from disclosure. Likewise, agencies may use journalistic internal reference as a reason to reject a request for disclosure. The chapter examines these two exemptions’ abilities, not explicitly written into *OGI Regulations*, to restrict, significantly, the flow of information.

Chapter Nine explores the relationship between the FOI law and Chinese news media. The discussion considers if journalists in China participated in formulation of the FOI law and how Chinese editors and reporters have publicized the FOI law and exposed agencies’ non-compliance. Most importantly, the research examines if, how and why Chinese journalists have used *OGI Regulations* to access information for news reporting.
Major Research Findings

After extensive research on the topic of Chinese freedom of information, this study has found that, by comparison, the Western concept of the right to know intimately entwines with philosophies of freedom of expression and freedom of the press. China has a long history of practices of disclosure of governmental information, however, the modern concept of the right to know had long been absent in this country. The Western concept of the right to know, introduced to China in the 1990s, underwent modification by Chinese legal scholars and law reformers in an attempt to create compatibility with the unique Chinese political conditions and cultural traditions. The modification omitted the original ties of the right to know to freedom of expression and the press, and instead, highlighted relationship between the right to know and the sovereignty of the people, a principle of the Chinese Constitution. Chinese legal scholars and law reformers argue that the right to know contributes greatly to economic growth and E-governance. Although the term “the right to know (zhiqingquan 知情权)” does not appear in the final text of OGI Regulations, scholarly and media discussions of the concept have become politically acceptable. The above finding is consistent with prior study conducted by Weibing Xiao and other FOI scholars in China.

This study has found that the four theories of the press remain useful tools for conceptualizing the changing paradigm of the Chinese news media. Despite the Chinese media system’s movement towards liberalization, commercialization, technological innovation, and professionalization since the 1980s and 1990s, the fundamental relationship between the press, the party, and the state remain unchanged in the post-Mao reform era. The Chinese press, in general, are still extensions of the party and the
government. Such a relationship constitutes the basis for the instrumental use of the media by the Chinese bureaucracy to either facilitate or stifle flow of information.

This research project also finds that Chinese rulers from the Xia Dynasty to the PRC, under the leadership of Chinese communists, held diverging views and predilections toward openness and secrecy, regardless of the nature of government. Further, these findings explain, at least partially, the varying degrees of official transparency during China’s long history. Hundred schools of thought, flourishing during the Zhou Dynasty, influenced subsequent Chinese rulers, including today’s leaders, in terms of their crafting particular policies toward dissemination of information. Mohism embraces transparency, but most rulers suppressed Mohism because of its democratic nature. Legalism advocates disclosure of imperial orders, directives, laws, regulations, and other legal codes but objects to disclosure of any other information concerning the conduct of the government. As the ruling ideology of most imperial dynasties in China, Confucianism does not agree with official openness at all. Taoism basically embraces anti-communication. Taoists’ have limited influence on official policies of information because Taoism applies mostly to officials at leisure, in retirement, or politically ostracized.

The dissertation identifies four peak periods of Chinese official transparency. The first peak occurred during the Zhou Dynasty through the practices of proliferating publicized, written laws and allowing relative greater freedom of expression enjoyed by common people. The second peak occurred in the Tang and Song Dynasties when rulers and ordinary citizens used newspapers (the court gazettes or short reports) to disseminate official information. Greater public access to governmental information in the Tang and especially Song dynasties was possible also because emperors and prime ministers in these
two dynasties shared power. Emperors had no absolute power. They had to consult with their prime ministers on major issues before making decisions. Transfer of official documents between emperors and prime ministers were thus frequent. These checks and balances in the political system allowed greater information flow between the sovereigns and their subjects.

The Republic of China represents the third peak of official openness when private news outlets covered governmental activities rigorously. The fourth peak has arguably occurred during the post-Mao communist China. The movement toward greater government transparency emerged in the 1980s when Xiaoping Deng was the paramount leader and culminated in the 2000s when Jintao Hu and Jiabao Wen carried on the torch of transparency and formulated the country’s first freedom of information law. Two lows of official transparency are noticeable: The Qing Dynasty and Mao’s China were among the most restrictive regimes in terms of disclosure of information. The bureaucracies in the Qing Dynasty and the pre-reform PRC were highly secretive through the state’s suppression of mass media and absolute power of its supreme leaders.

The dissertation finds that ancient China developed an extraordinary self-enclosed communication system to sustain its huge bureaucracy. The flow of information among emperors, advisors and local bureaucrats was frequent and efficient even by modern standards. Such a developed communication system contributed to the longevity of the Chinese empire. Of course, this communication system excluded most common people. However, pre-modern mass media played a significant role in publicizing official

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information inside and outside of the bureaucracy in ancient China. Chinese rulers used many innovative methods to allow information to reach as many common people as possible. The inception of the court gazette in the Tang Dynasty facilitated and fostered better communication within the bureaucracy. Short reports that emerged in the Song Dynasty and independent private media that flourished in the Republic of China changed the rules. These two methods challenged official interpretation of social events and greatly enhanced the people’s knowledge of the government’s activities.

This research, consistent with many other research findings, has found that the entire OGI legislative process in China was elite-driven and policy-driven. The movement toward final passage of the FOI law in China began in the early 1980s in rural areas and slowly expanded to higher levels of government. Experiences from practices of open government at local and provincial levels provided a firm foundation for shaping national legislation. However, despite low-level experiments, the legislative process was dominated by political elites. While some prominent legal academics advised political leaders for the formulation of the FOI law, the majority of civil society (journalists, lawyers, professors, students, NGOs, rights activists, ordinary citizens) played no key roles in drafting the Chinese FOI law. This elite-driven process contrasts sharply with many other FOI countries where the civil society contributed significantly to the formulation of the laws.

This dissertation identifies two major external factors and at least five internal determinants that made the passage of the FOI law in China possible. China’s entry into the World Trade Organization and pressure from the United States, its largest trading partner, are the two major external factors influencing China’s transition toward greater transparency. The five internal determinants, some of which were examined by other
scholars, are: the political leaders’ unswerving commitments to enhance transparency; administrative law reform that offered statutory and constitutional support for reformers drafting OGI legislation; the improved capacity for government to distribute information; the changed social and informational environments in the early 2000s that stimulated the Chinese government to become more transparent and proactive in dealing with crises; and reduced political sensitivity of OGI reform made possible by law reformers who convinced top leaders that an FOI law would contribute significantly to China’s economic growth, E-governance, and prevention of corruption.

FOI scholar Weibing Xiao conducted an insightful examination of some of these internal factors in his research of Chinese FOI law reform and he argued that democratization, among other factors, is a key rationale for China’s efforts to promote greater transparency.¹⁴⁰⁹ This research contends that “democratization” is not the goal of the Chinese government in advocating greater transparency, if the term is used in the Western sense of the word to indicate the transition from an authoritarian regime to a full democracy or semi-democracy or a more democratic political regime. This research argues that the adoption of OGI Regulations and relevant transparency laws and regulations is not a component of Chinese democratization. In other words, the FOI law is possible not from Chinese leaders’ strong beliefs in democratic values that are widely accepted in the Western world. Freedom of information legislation emerged in China because law reformers successfully persuaded the political leaders that a FOI law would not cause unbearable social turmoils. On the contrary, the law would benefit economic growth, E-governance, corruption prevention, law-based administration, and crisis communication

management. These are all goals set by the party within the socialist framework characteristic of China. The ultimate goal of promoting transparency is to help maintain legitimacy and ruling status of the party.

After examining statutory language of *OGI Regulations* and other relevant legal documents, this research project has found that China has embraced many international best practices in its FOI law and even go beyond international standards in some regards but at the same time tends to be conservative in many key aspects of the law. For example, *OGI Regulations* are strongly proactive for disclosure and includes a comprehensive list of information that agencies are to disclose, affirmatively, without requiring a request. *OGI Regulations* also establish time limits, not found in U.S. and many other countries’ FOI legislations, for affirmatively disseminating official information. The scope of non-government entities covered by *OGI Regulations* is more expansive than many FOI laws of other nations. All colleges and universities, hospitals and clinical institutions, public utilities companies, environmental protection-related public institutions, and public transportation companies are subject to the requirements of *OGI Regulations*.

However, *OGI Regulations* are generally weak regarding reactive disclosure. The internationally adopted principle of a presumption of disclosure is absent in the law. The exemption clauses in *OGI Regulations* are among the most restrictive in the world. Many crucial terms such as state security, public security, economic security, social stability, commercial secrets and personal privacy are vague or not defined. The Chinese FOI law subjects only one part of the Chinese bureaucracy, the people’s government, to requirements of disclosure. Other governmental institutions such as the party and the military are not subject to the law although they hold large volumes of information that the
public has a right to know. China could have embraced a stronger and more effective FOI law if the lawmakers were more willing to listen to Chinese legal scholars’ recommendations. The half-heartedness of the government in promoting greater transparency reflects the gradual and incremental nature of China’s political reform. Political leaders fear that a more progressive FOI law would encounter more resistance from people in power and lead to social chaos and instability.

Overall, China’s FOI law is lacking effectiveness in terms of its statutory language. Given the law’s limited promise for transparency, government agencies at various levels are surprisingly compliant. This research has found that the Chinese government, at various levels, proactively disclosed information required by the provisions of OGI Regulations, after enactment in May 2008. Overall, the Chinese government has been successful in establishing the FOI platforms and enforcing proactive disclosure requirements under OGI Regulations. Data collected from agency annual reports of OGI activities (2008-2011) show that most OGI applications processed by Chinese agencies, at various levels, have gained approval during the last four years. This is a significant achievement for the Chinese government because OGI Regulations are weak in statutory language for disclosure of information upon request.

In the meantime, considering the quality of enforcement of affirmative and reactive disclosure requirements requires caution because of the limitations of data released by the government and unavailability of sufficient data from independent sources. Furthermore, most official information sought from 2008 to 2011 did not involve the public interest and was thus less sensitive. This factor might also inflate the actual compliance of agencies with requirements of OGI Regulations.
This research project has also found some significant problems in the enforcement of *OGI Regulations*. Generally, administrative reconsideration and judicial review are ineffective for rectifying non-compliance with *OGI Regulations*. Administrative agencies, superior administrative agencies that review non-disclosure decisions, and courts normally take stand in favor of withholding information on non-statutory grounds rather than statutory grounds. In other words, they reject information disclosure requests for reasons not listed in *OGI Regulations* and other relevant laws. These practices are especially troubling because they make it harder for requesters to seek any administrative or judicial remedies for requests denied on non-statutory grounds. In addition, another notable loophole is that disclosure of governmental information held by military and national security agencies (the Ministry of National Defense and the Ministry of State Security) are lacking, despite both agencies’ being subject to *OGI Regulations*.

This dissertation has also found that laws regulating journalistic internal reference and internal working documents are problematic. *OGI Regulations* have no provisions for whether or not internal working documents or journalistic internal reference should be exempt. Chinese administrations have used internal working documents as shields for disclosing information. Agencies may therefore use journalistic internal reference as a reason to deny disclosure in the future.

Another major finding of this research project concerns journalistic contributions to the proposal, formulation, passage, publicizing and use of *OGI Regulations*. Unlike many foreign journalists who played pivotal roles for proposing, formulating, and using freedom of information legislation, this dissertation finds that Chinese journalists had no involvement in recommending and formulating *OGI Regulations*. However, it is encouraging
that Chinese editors and reporters played prominent roles in covering and publicizing *OGI Regulations*. Widespread media exposure of non-compliance with *OGI Regulations* created significant pressure on administrative organs that flatly ignored legal obligations to exercise power openly. Detailed examination of media content and personal interviews with insiders show that Chinese journalists have not systemically and vigorously used *OGI Regulations* to obtain official information. One reason, among others, for journalists’ limited use of the FOI law is a lack of strong legal protections for press freedom.

**Major Suggestions and Recommendations**

The findings and relevant analyses in the previous nine chapters give rise to some suggestions and recommendations. In order to realize the principle of maximum disclosure and at the same time protect certain categories of information from undue dissemination for effective administration, Chinese FOI reformers should adopt a wide variety of legal and policy remedies. The principal proposed remedies that could make China’s FOI system more efficient and effective include:

(1) Amend *OGI Regulations* at the appropriate opportunity. When revising the current FOI law, Chinese law reformers should abolish old, ineffective provisions and add new, progressive provisions. For example, include the specific term “the right to know” and specify the principle of maximum disclosure into the revised law; narrow down the scope of exemption clauses; include a “substantial harm test” in the exemption clauses;\(^{1410}\) apply the public interest test not only to commercial secrets and personal privacy but also to

\(^{1410}\) In order to justify exempting certain categories of information, agencies must show that the disclosure of the information would cause substantial or significant harm to certain legitimate interests, such as national security, trade secrets, and personal privacy. Low degree of harm is insufficient to trigger decisions to seal information.
state secrets;\textsuperscript{1411} abolish the special needs test, which stipulates that the information requested must be relevant to requesters’ special needs, including their production, livelihoods, and scientific research;\textsuperscript{1412} remove sub-paragraph (5) of Article 35 of OGI Regulations;\textsuperscript{1413} add a provision protecting whistleblowers; grant foreign citizens the same right of access to official information or grant access only to foreign citizens whose countries reciprocate on FOI issues; create a public interest test for reduction or exemption of fees to accompany the economic hardship test.\textsuperscript{1414}

(2) Strive for a rule-of-law based administration and establishment of a relatively independent and impartial judicial branch. For example, reformers need to persuade the Ministry of National Defense and the Ministry of State Security that disclosure of non-sensitive information held by these two agencies enhances administrative efficiency and accountability; prohibit administrative agencies, administrative reconsideration agencies, and courts from denying disclosure of information for non-legal reasons; create the position of chief information officer at each appropriate administrative agency to supervise, coordinate, and centralize OGI activities. Also create an independent organization, as an OGI information commission or ombudsman to mediate OGI disputes. The organization

\textsuperscript{1411} Information concerning state secrets should still be released if sufficient evidence exists to prove that public interest from disclosure outweighs harm to the nation’s security.

\textsuperscript{1412} Abolishing this special needs test allows requesters to apply for information without justifying a purpose.

\textsuperscript{1413} Under this clause, Chinese officials have no protection from sanctions if they disclose, even in good faith, information that is not subject to disclosure.

\textsuperscript{1414} OGI Regulations, with the addition of the public interest test, would encourage journalists and public interest groups to use the law for the purpose of disseminating official information to as many people as possible.
may consist of governmental officials, chief information officers, journalists and OGI legal scholars. All members should be part-time.

(3) Determine how to deal with governmental information contained in “journalistic internal reference” and “internal working documents.” Law reformers may abolish the journalistic internal reference system once and for all. As an alternative, they may include “journalistic internal reference” in the Chinese FOI law as an exemption but clearly narrow the scope of this exemption. Chinese reformers may consider reducing the number of journalistic internal reference publications. They may also consider declassifying journalistic internal reference materials in a timelier manner and guarantee that journalistic internal reference materials contain only information that is sensitive enough to be designated as state secrets. Law reformers may also seek to include “internal working documents” in the Chinese FOI law as an exemption, but the government must narrow the scope of this exemption in clearly stated language.

(4) Engage in a wide variety of law-making activities to make sure the Constitution and all the other FOI-related laws and regulations could provide a nurturing legal environment for the FOI law to grow and become truly effective. For example, formulate OGI Law to replace OGI Regulations when the opportunity is appropriate to enhance its legal standing; amend Constitution 1982 and explicitly enshrine the key phrase “the right to know” in the amended document as a foundational constitutional principle; amend existing laws relating to FOI\textsuperscript{1415} to make sure that disclosure takes precedence whenever there is a conflict between OGI Law and other laws; draft access laws that apply to the party, the

\textsuperscript{1415} Such laws include but are not limited to: Law on Guarding State Secrets, Archives Law, Emergency Response Law, Public Servants Law, Administrative Litigation Law, Criminal Law and Statistics Law.
people’s congress, the courts, the procuratorate, and the political consultative conference;\textsuperscript{1416} access laws applying to the military should have consideration as well; develop a set of FOI-related transparency laws, such as \textit{Privacy Protection Law}, \textit{Personal Information and Data Protection Law}, \textit{Public Servants’ Personal Assets Disclosure Law}, \textit{Freedom of the Press Law}, and Chinese sunshine laws entitling citizens to attend important party and official meetings and access official facilities.\textsuperscript{1417}

The Chinese government should accomplish all these recommendations at opportune times. China is a civil law country, not a common law country. Legal precedents have limited judicial value. In this regard, formulating a strong and functional statute is crucial, and amending laws to reflect the changing social realities is also vital. However, lawmaking cannot be successful if it happens during times of rigorous resistance. In China, changes require political wisdom to determine appropriate timing. Chinese law reformers

\textsuperscript{1416} These five branches of the government control a wealth of information no less important than documents and records held by the people’s government. These “big five” should be accountable.

\textsuperscript{1417} In addition to the aforementioned principal remedies, the Chinese government must also (1) strengthen FOI training for leading officials at various levels because full support from leading party and governmental officials is a key component for successful enforcement of \textit{OGI Regulations} in China. Party schools and other cadres’ training institutions should have FOI as a mandatory course; (2) ensure that all Chinese undergraduate and graduate students with majors in journalism, public relations, or mass communications complete at least one mass media law course. The mass media law course should provide an overview of Chinese FOI law, other laws, regulations, and codes relevant to journalism and mass communications in China. This changed curriculum would enhance FOI awareness of prospective Chinese journalists and other professional communicators; (3) promote civic education among pre-college Chinese students. Effective civic education would cultivate a political culture that is conducive to emergence of a civil society and realization of rule of law; (4) strengthen collaboration between China and other FOI countries. Officials, journalists, lawyers, professors, NGOs, and other FOI stakeholders from different countries would benefit from regular exchanges of lessons and experiences from various issues concerning FOI. Such exchanges could be institutionalized.
have shown sufficient political willpower for rendering FOI politically acceptable. Good reasons exist to believe that reformers would succeed again in moving China toward greater governmental transparency in the coming years.

**Research Limitations and Directions for Future Research**

This research made a substantial and innovative contribution to the existing FOI literature. It explains, in great detail and depth, how official transparency and secrecy has evolved during China’s civilization and how the Western concept of freedom of information was accepted and modified in the Chinese context to adapt to Chinese conditions. The research analysis, based on large amount of qualitative and quantitative data concerning legislative process, statutory language and enforcement of China’s first nationwide freedom of information law, shows convincingly why a freedom of information law could become possible in an authoritarian regime with no strong civil society and rule of law. The research also explains why, despite all the shortcomings of OGI Regulations and widely held Western assumption that FOI law in nondemocratic countries are used merely for democratic window dressing, the Chinese FOI law can be surprisingly vibrant and resilient at times. Overall, this research contributes enhanced understanding of intricacies of authoritarian transparency.

The research has its limitations. First, the original plan considered inviting ordinary Chinese citizens, governmental officials, and journalists to participate in an online survey, whose purpose was to gather quantitative data for statistical analysis examining the perceptions and use of Chinese FOI law. However, time constraints and other logistical problems prevented conducting the survey. Plans also included exploration of the relationship among different types of authoritarian regimes and degrees of press freedom.
The goal was to establish additional statistical support for the theory that among the three types of authoritarian regimes (military regimes, single-party regimes, and personalist/dictatorship regimes), single-party regimes allow for the greatest level of press freedom. That theory, in combinations with the four theories of the press, was to conceptualize the Chinese news media system. The intended statistical analysis was to be running cross-sectional, time-series, linear regression using the SPSS computer program. While all datasets are complete, cleaned, and verified, the statistical analysis is incomplete due to time constraints and other logistical problems. The quantitative research has value as a potential contribution to understanding the Chinese FOI law. This aspect of the research is worthy of future consideration.

Second, the scope of entities subjected to OGI Regulations is expansive. For example, hospitals and clinical institutions, public utilities companies, environmental protection-related public institutions, and public transportation companies in China are all subject to OGI Regulations.\footnote{OGI Regulations 2007. Art. 37.} Implementation Rules of disclosure of information currently apply these entities.\footnote{Information Disclosure Implementation Rules of Colleges and Universities 2010 [高等学校信息公开办法] Jiaoyubu Ling[2010] No.29, effective date: September 1, 2010; Information Disclosure Rules of Health Institutions (Exposure Draft) 2009 [医疗卫生机构信息公开实施办法（征求意见稿）] the General Office of the Ministry of Health, publication date: August 24, 2009; Information Disclosure Implementation Rules of Public Utilities Institutions such as Water, Gas, Heating Supply Companies 2008[供水、供气、供热等公用事业单位信息公开实施办法] Jiancheng[2008] No.213, effective date: October 12, 2008; Interim Rules of Information Disclosure Implementation for Public Institutions on Environmental Protection 2010 [《环境保护公共事业单位信息公开实施办法（试行）》] Huanfa [2010] No.82, effective date: October 1, 2010; Guiding Opinion on Information Disclosure of Public Transportation Entities 2008 [《交通运输公共企事业单位信息公开指导意见》] Jiaobanfa[2008] No.350, effective date: October 8, 2008.} This research is unable to delve into this area due to time constraints and...
restraints on the study’s length. An illuminating investigation would be to explore disclosure requirements’ enforcement among those non-governmental entities.

Third, a planned comparison of OGI Regulations with the FOI laws in an authoritarian country, an Eastern European newly democratic country, and an East Asian country where Confucianism has a strong presence, is not possible due to time constraints and the scope of the dissertation. These comparisons must be topics for future study. When comparing the Chinese FOI law with the similar law in an authoritarian country (Zimbabwe would be a good choice\textsuperscript{1420}), investigating the differences in passage and enforcement of FOI laws in the two authoritarian countries would be illuminating. When comparing China’s FOI law with the equivalent legislation from an Eastern European country (Hungary would be a choice\textsuperscript{1421}), a valuable inquiry would be analyzing one communist country’s and another former communist country’s differing creations and implementations of FOI laws. When comparing OGI Regulations with the FOI law in an East Asian country with a strong Confucianism tradition (e.g., South Korea\textsuperscript{1422}), the differences between two Confucian countries for the promises and practices of access laws would be a

\textsuperscript{1420} Zimbabwe adopted the Access to Information and Privacy Protection Act (AIPPA) in 2002. The AIPPA is similar to many other FOI laws around the world in FOI rights and procedures for access. Unfortunately, the government of Zimbabwe has used the law to suppress freedom of expression and the press.


\textsuperscript{1422} South Korea passed the Act on Disclosure of Information by Public Agencies in 1996 and the law went into effect in January 1998.
valuable addition. Investigating these three international FOI models (authoritarian model, communist model and Confucianism model) would be invaluable.

Fourth, philosophies and practices of official transparency and accountability in ancient China inspired the world's first FOI law. This study examined perspectives of traditional Chinese philosophies in relation to governmental secrecy and transparency. Many questions remain unanswered due to time constraints and the scope of this study. For example, in the discussions of the information policies of various dynasties and governments, the current research does not address the reasons specific informational policies or official actions did or did not occur. For instance, Tang emperor Taizong did not allow access to documents except for privileged officials. Some writers of short reports in the Song Dynasty received punishment, others did not. Analysis of the rationales for openness or secrecy would provide a clearer understanding of the progression of Chinese information policies. In addition, hundred schools of thought that flourished in the Zhou Dynasty cover a wide range of Chinese philosophies, and Mohism, Taoism, Legalism and Confucianism, some other philosophies such as School of Diplomacy and School of the Military, to varying degrees, introduce many issues on governmental information. The School of the Military emphasized that rulers should develop good information sources inside enemies’ countries to understand the enemies fully and win wars. Further investigation should consider the influences of these philosophies on ancient Chinese rulers’ handling official information.

Last, original plans included devoting a chapter to predicting future development of the freedom of information movement in China. This plan did not reach realization due to

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time constraints and the scope of this study. Perhaps, investigation of these predictions can occur after the Chinese FOI law matures and the future of China becomes more certain. Governmental transparency is a component of China’s political reform, which involves too many uncertainties. As for the outcome of Chinese political reform and the future of the party, many China specialists in the West have outlined a range of possible scenarios.\(^{1424}\)

For example, Bruce Dickson, a prominent political scientist, speculated four scenarios; according to their likelihood they are: continued CCP (Chinese Communist Party) rule, unconsolidated democracy or illiberal democracy, successful democratization, and military regime.\(^{1425}\) An interesting speculation would involve applying the status of freedom of information in China to each scenario. Arguably, the first scenario (continued CCP rule) is the most likely prospect for China during the next twenty years, so the foreseeable future entails movement of freedom of information in China within the orbit of the party.

International observers should continue to watch the party’s unique defining of freedom of information.

**Summary and Conclusion**

This chapter provides a recapitulation of key points covered in the previous nine chapters, discusses the major research findings, offers suggestions and recommendations

\(^{1424}\) Those China specialists include, but are not limited to: Robert Scalapino of the University of California, Berkeley; Richard Baum of the University of California, Los Angeles; the Stanford University professor Andrew Walder; the Harvard University professor Tony Saich; the George Washington University professor Bruce Dickson; the Brookings Institution scholar Cheng Li and the George Washington University professor David Shambaugh. **DAVID SHAMBAUGH, CHINA’S COMMUNIST PARTY: ATROPHY AND ADAPTATION 170-81 (2008).**

for Chinese FOI law reformers, highlights major research contributions, acknowledges limitations, and suggests several possible directions for future research of the Chinese freedom of information.

Where does China stand in terms of quality of FOI law and effectiveness of enforcement? Some scholars produced incomplete rankings and China was not included.\textsuperscript{1426} Two non-profit organizations, Access Info Europe and The Centre for Law and Democracy,\textsuperscript{1427} announced in September 2012 the world’s most comprehensive FOI rating that included all the 93 countries with access to information legislations.\textsuperscript{1428} Countries are evaluated in seven categories (see Table 10-1) and then assigned a total score out of maximum 150 points. According to the ranking, China’s FOI law scored 72 points, giving China a rating at 63th out of 93 FOI countries (see Table 10-2).

\textsuperscript{1426} For example, Australian FOI scholar Johan Lidberg produced a tentative FOI Index to rank Sweden, Australia, USA, Thailand and South Africa in term of gap between the FOI legislation promise and the practice; two British FOI experts Robert Hazell and Ben Worthy developed a number of measures to compare the FOI law in the United Kingdom with similar laws in Australia, New Zealand, Canada, and Ireland. Johan Lidberg, The International Freedom of Information Index: A Watchdog of Transparency in Practice, 30 NORDICOM REVIEW 167 (2009); Johan Lidberg, Beyond the Freedom of Information Index: An Audit of FOI Reform, paper presented at the Media and Global Divides Conference in Stockholm, Sweden, July 20-25, 2008; Robert Hazell & Ben Worthy, Assessing the Performance of Freedom of Information, 27 GOVERNMENT INFORMATION QUARTERLY 352 (2010).

\textsuperscript{1427} AccessInfo Europe (http://www.access-info.org/) is a Madrid-based human rights organization devoted to promotion and protection of the right of access to information in Europe and globally. The Centre for Law and Democracy (http://www.law-democracy.org/) is a non-profit organization aimed at promoting fundamental human rights.

\textsuperscript{1428} The FOI or RTI (Right to Information) Rating was initially announced in September 2011 and 89 countries with FOI laws were ranked. It is the first time for AccessInfo Europe and Centre for Law and Democracy to update the rating.
China’s FOI law lost a lot of points in all categories except promotional measures (China scored 13 out of maximum 16 points in this category).\footnote{For a detailed explanation of why China lost points in certain categories and earned points somewhere else, and how it relates to provisions of OGI Regulations, see China: Right to Access, http://www.RTI-rating.org/view_country.php?country_name=China} There is no doubt that China is lagging far behind many FOI countries in terms of the effectiveness of the law. However, Chinese law reformers do not need to be overly pessimistic because the rating has two major shortcomings. One is that the ranking does not take proactive disclosure into consideration. Second is that the rating does not evaluate how effective a country’s FOI law is enforced in practice, instead, it assesses only the law itself. Despite all the aforementioned drawbacks of OGI Regulations, the Chinese FOI law is strong in proactive disclosure of information and OGI Regulations are, overall, vigorously used and forcefully implemented in the last four years, especially if party and governmental leaders prioritize OGI or information sought is not sensitive, as analysis in Chapter Seven indicated. China would definitely have a much better rating if Access Info Europe had adopted a different rating methodology incorporating both proactive disclosure and implementation of the law.

Further, China could find relief from the fact that a large number of democracies were rated poorly. Of the bottom 10 FOI countries/regions, most are democratic ones.\footnote{The following are such countries/regions and their corresponding ratings: Austria, 93; Liechtenstein, 92; Greece, 91; Germany, 89; Italy, 87; Taiwan, 84; Belgium, 85. Country Data, Global Right to Information Rating, available at <http://www.RTI-rating.org/country_data.php> (last visited November 18, 2012).} The ratings for well established democracies such as United States, Canada, Switzerland,
France and Denmark are particularly embarrassing for people who believe that long democratic traditions would give a free pass to effective freedom of information law.

No matter how to interpret the FOI ratings, one thing is certain: China’s progress is commendable for the government’s achievements, during the last 30 years, for gradually and incrementally changing traditionally secretive bureaucratic activities into more open actions. Even Access Info Europe admitted, “China’s score on the whole is higher than we would have anticipated.” Of course, more transparency is necessary; the Chinese government clearly has a lot more to do to uncover powerful officials’ activities for public scrutiny.

One may interpret China from many perspectives. The country boasts over 4,000 years of uninterrupted civilization and more than 1,000 years ago inspired the world’s first freedom of information law. The country invented the world’s first printing machine and

1431 The following are such countries and their respective ratings: United States, 39; Canada, 55; Switzerland, 66; France, 68; Denmark, 78. Country Data, Global Right to Information Rating, available at <http://www.RTI-rating.org/country_data.php>

1432 Any ranking is prone to controversy due to the methodology used and complexity of issues involved.


first piece of paper, the universal medium for carrying and recording information and knowlege. The country suffered from the Western domination and humiliation for nearly 100 years due to a closed-door policy, and the path to greater freedom of information began in 1978 with country’s policies of reform and openness to the outside world. Since then, Chinese citizens gained increasing access to information vital to their lives.

Today, China has become one of the most powerful nations on earth, politically, economically, militarily and culturally. Under the leadership of new generations of communists, the world’s most populous nation is becoming increasingly integrated with the global community. As the country enjoys unprecedented prosperity, it also faces unprecedented political, economic, social, and environmental challenges. Among all the laws China enacted in the last 60 years, freedom of information legislation has the greatest potential for successfully addressing those challenges. Witnessing the maturity of Chinese FOI law is potentially illuminating and rewarding. China’s successes and setbacks in freedom of information will continue to provide significant inspirations for the rest of the world.

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1435 The awarding of the 2012 Nobel Prize in Literature to an author with Chinese citizenship is a most recent testament to China’s cultural strength. In evaluating the significance of China’s winning the prize, a New Yorker writer said, “Achieving it was always seen as a referendum on China’s cultural development.” Evan Osnos, Mo Yan and China’s “Nobel Complex,” New Yorker, October 11, 2012, <http://www.newyorker.com/online/blogs/books/2012/10/mo-yan-and-chinas-nobel-complex.html> (last visited November 18, 2012).

1436 Yanbin Lv is a legal scholar at the Chinese Academy of Social Sciences and an expert familiar with OGI Regulations. In an email interview with the author of this dissertation, he stated that the National People’s Congress is likely to legislate OGI Law to replace OGI Regulations, but he is not sure when that will happen.
Table 10-1: Right to Information Legislation Rating Methodology\textsuperscript{1437}

<table>
<thead>
<tr>
<th>Section</th>
<th>Max Points</th>
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<tbody>
<tr>
<td>1. Right of Access</td>
<td>6</td>
</tr>
<tr>
<td>2. Scope</td>
<td>30</td>
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<tr>
<td>3. Requesting Procedures</td>
<td>30</td>
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<tr>
<td>4. Exceptions and Refusals</td>
<td>30</td>
</tr>
<tr>
<td>5. Appeals</td>
<td>30</td>
</tr>
<tr>
<td>6. Sanctions and Protections</td>
<td>8</td>
</tr>
<tr>
<td>7. Promotional Measures</td>
<td>16</td>
</tr>
<tr>
<td><strong>Total score</strong></td>
<td><strong>150</strong></td>
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<td>Right of Access</td>
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\textsuperscript{1437} The table was produced by Access Info Europe and Centre for Law and Democracy, and retrieved from their website. For more information about the table and the FOI law rating methodology, visit RTI Legislation Rating Methodology, \texttt{<http://www.access-info.org/documents/Access_Docs/Advancing/Indicators.D9.pdf>} (last visited November 18, 2012).
<table>
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<td>Total</td>
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Table 10-2: Right to Information Legislation Rating for China¹⁴³⁸

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Since his employment at WIU in 2011, Tang has taught JOUR231 (Reporting for Mass Media I), JOUR232 (Reporting for Mass Media II), JOUR417 (Laws of Mass Communications) and JOUR410 (International Communication and Foreign Press). Tang also has strong interest in teaching courses like mass communication research methods, online journalism, social media skills and data visualization for journalists.

Before joining Western Illinois University faculty, Tang worked for more than a decade as an award-winning journalist at People’s Daily (Renmin Ribao), the largest and most politically influential newspaper in the People’s Republic of China. From 1995 to 2004, he worked as an international news editor for the publication. From 2004 to 2007, Tang worked in Washington, D.C. as a residential correspondent for People’s Daily. During that time, Tang interviewed former U.S. President Jimmy Carter, former Secretary of State Colin Powell, Ivy League presidents, leaders of Fortune 500 companies, heads of important international organizations and many other prominent figures.

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