

The Dilemma and Realization Path of Administrative Supervision of Personal Information Protection in China

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Abstract—Against the background of informational society's, personal information has become a strategic resource, while the issues of protecting it are highlighted. Personal information protection has involved in legislative, judicial, law enforcement and other aspects of problem. Based on it, this paper focuses on the status and dilemma of personal information supervision in china, and puts forward the ways to take charge of personal information.

Keywords—*personal information; public administration; self-protection; regulatory path*

I. INTRODUCTION

In the 21st century, with the development of science and technology, information resources have become one of the indispensable strategic resources for all countries. With the development of the Internet, the collection and use of personal information has become very extensive. On the one hand, personal information can be used to identify the characteristics of people, improve the work efficiency of institutions and businesses will be precise promotion of personal information, making the life of citizens more convenient. On the other hand, the uncontrolled collection and use of personal information will bring inconvenience to public life and hidden danger to security, such as the case of purchase and sale of express waybill number, the event of housing record opening, and the information leakage event of 12306. Personal information as a kind of resources, through the way such as network transmission has become parties to collection of objects, but not regular collection and use of will cause the instability of the network environment and social environment, so no matter in to protect the interests of the citizens, and maintaining social stability, the construction of a reasonable personal information protection administrative supervision system is imperative.

II. THE LEGAL BASIS OF ADMINISTRATIVE SUPERVISION OF PERSONAL INFORMATION PROTECTION

A. The Connotation and Extension of Personal Information

On the one hand, the identifiability of personal information enables others to accurately locate the

characteristics of the information subject among various information, which leads to the property and privacy of the information subject being exposed to the eyes of others without reservation and increases the possibility of the information subject being violated. On the other hand, since the characteristics of the information subject can be accurately positioned, businesses can provide services precisely according to these characteristics, thus seizing the market. In turn, it can be seen that personal information not only plays an indispensable role in the information subject, but also is a resource for the market economy. Therefore, the generation of personal information protection mechanism is a balance mechanism for the protection and utilization of personal information.

With the development of science and technology, the extension of personal information also expands. "Personal information such as name, address, date of birth, id number, medical record, identification record, photograph, which can be identified individually or in comparison with other information", according to the original legislative proposal [1]. To the current norms of Internet users' personal information, information that can be used for identification, such as the login password of the account, the time and place to use the network service, etc. Therefore, personal information is all information that can identify the identity characteristics of a specific natural person.

B. Personal Information and Privacy

First, the right to privacy is derived from the sacredness of personal freedom and dignity. With the emergence of the Internet, the distance between people has been shrinking, which also makes everyone's self-space shrinking. As a result, demands for keeping private affairs secret have emerged. This is also the reason why the right of privacy exists as the subordinate right of personality right in China.

Second, although personal information initially exists as a type of privacy, there is no direct affiliation between the two. Some personal information overlaps with privacy, but more personal information has nothing to do with privacy. Such as physiological information, family life information due to the subject's personal dignity, thus belongs to privacy; for example, information with certain openness, such as

mobile phone number and E-mail, does not belong to privacy because its degree of privacy is much lower than other information; such information as consumption record and travel record has a certain aggregation, which cannot directly identify the information subject, so it does not belong to privacy. In addition, even in the case of personal information leakage, whether it will directly cause damage to the interests of personal privacy, which is also different from person-to-person need value judgment.

In conclusion, personal information should be protected by law due to its identification of the subject of information. When a certain personal information cannot identify the information subject, even if it is disclosed, it will not harm the interests of the information subject; however, once a certain item of personal information or several items of personal information are combined enough to identify the information subject, the disclosure of it will not only damage the interests of privacy, and sometimes may cause damage to other legitimate rights and interests of the information subject. There is no one-to-one correspondence between personal information and privacy. The protection of personal information focuses on preventing its improper disclosure and use, while the protection of privacy focuses on the relief of mental damage caused to the subject due to the disclosure of privacy.

C. The Connotation of Administrative Supervision of Personal Information Protection

Administrative supervision refers to the micro intervention or control of the subject of administrative supervision over the market economy in accordance with the provisions of the law. Therefore, the essence of administrative supervision over personal information is the regulation of the public authority to exercise the right to identifiable personal information according to the express provisions of the law. The characteristics of administrative supervision of personal information are as follows: first, the object of supervision is personal information, that is, information with a specific identifiable information subject; secondly, the administrative organ should exercise its due functions and powers within the scope permitted by law, and check and balance by public power; Third, the purpose is to protect personal information and adjust and control the exercise of the right to personal information.

The premise of the existence of administrative supervision is the failure of the market. In real life, there are many factors, such as the legislative gap brought by the development of the Internet and the low protection awareness of the information subjects themselves, which will lead to the failure of the protection mechanism.

III. THE STATUS QUO OF ADMINISTRATIVE SUPERVISION ON PERSONAL INFORMATION PROTECTION IN CHINA

A. Legal Basis for Administrative Supervision of Personal Information Protection

As for administrative supervision, "nothing in the law can be done". Therefore, administrative organs need to be

authorized by specific laws and regulations when exercising the public power of supervision over the protection of personal information. However, China does not have a special law on the protection of individual information rights, which is scattered in the constitution, various departmental laws, administrative regulations and local regulations.

The first is the constitution. In accordance with the provisions of article 38 and article 40 of Chinese current constitution, namely, that the personal dignity of citizens is sacred and inviolable, it is strictly prohibited to use all means of insulting, slandering, falsely accusing or framing citizens, and to infringe upon the privacy and freedom of citizens' correspondence outside the scope of inspection permitted by law. These two provisions are the direct constitutional basis for exercising the right to protect personal information and are also the provisions of principle. Meanwhile, article 24, article 41 and article 51 of the constitution establish the inviolability of citizens' human rights and indirectly become the basis for the protection of personal information.

The second is department method. In accordance with articles 101 and 102 of the general principles of civil law, citizens and legal persons enjoy the right of reputation and honor and are protected by law. This is an indirect provision on the protection of personal information in terms of reputation and honor, which is also the specific embodiment of article 38 of the constitution. At the same time, it can be seen from the interpretation of the supreme people's court on the compensation for civil tort spiritual damage that China currently indirectly protects personal information involving personal privacy by protecting the right of reputation, which is also the regulation that China usually cites to protect personal information.

In accordance with the provisions of article 246 (1), article 252, article 253 and article 246 (1) of the criminal law, criminal penalties shall be imposed on ACTS such as defamation of another person, selling of another person's personal information, and postal workers' private opening of another person's letters. The above clauses clearly stipulate the criminal liability for infringing others' right to personal information and are also the direct basis for protecting personal information.

According to the provisions of article 120 of the civil procedure law, article 45 of the administrative procedure law and article 152 of the criminal procedure law, cases involving the privacy of others shall not be heard in public, which is the provision of the principle of legal reservation since the legislation, and also reflects the indirect protection provided by the three procedural laws for the protection of personal information.

Other administrative regulations, rules and local regulations provide the basis for the protection of personal information directly or indirectly and from different perspectives.

B. Personal Information Protection Is the Subject of Administrative Supervision

China does not yet have a systematic and specific administrative regulatory body to exercise the power of personal information protection. At present, the institutions involved in the protection of personal information mainly include the ministry of industry and information technology, the ministry of commerce, the ministry of public security, the state Internet information office, the state administration of press, publication, radio, film and television and other state organs.

At present, the ministry of industry and information technology is the most important supervision and law enforcement department for the protection of personal information in China. The information security coordination department is mainly responsible for coordinating the construction of the national information security protection system, promoting the information security protection hierarchy, and providing guidance for the information security work of various supervisory departments and industries.

The ministry of commerce is the major department of Chinese foreign trade and the promotion of domestic economic development. Its legal treaty division, foreign trade division, electronic commerce and information division and other institutions for the protection of personal information issued a decree to make the regulatory law to follow.

The ministry of public security, as a functional department in charge of the work of public security throughout the country, also oversees the security of public network information. For example, the network security bureau is mainly responsible for the supervision of network information, and timely deal with the behaviors of infringing others' personal information, spreading harmful personal information and abusing personal information.

The main responsibility of the state Internet information office is to implement and use the Internet as a tool for the dissemination of information policy, and supervision of the relevant departments of the Internet to the dissemination of information management.

The above state organs have made remarkable contributions to the protection of personal information and provided the direction for the personal information protection system that is still under exploration, but they are unable to deal with various problems in reality in a timely manner.

C. The Content of Administrative Supervision on Personal Information Protection

Although the basis, subject and object of administrative supervision in China have been stipulated to some extent, the content of supervision is still controversial. At present, the content of personal information protection is divided into the following two categories:

The first is the right to privacy of personal information. The subject of the information has the obligation to require the administrative organ to strictly guarantee the confidentiality of the personal information collected. However, there are two exceptions. First, under the law, for the sake of public interests, administrative organs transfer the personal information held by one administrative department to another administrative department for the purpose of improving efficiency, and the use purposes of the two administrative departments must be consistent. Second, under legal circumstances, the data kept for public records are disclosed to the third party for inquiry. The second refers to the right to decide personal information. The decision right of the information subject is in the most important position. But the decision is relative. Rights and obligations are equal. When enterprises become social welfare recipients, they must also put forward their personal information in accordance with legal procedures.

D. Specific Measures for Administrative Supervision of Personal Information Protection

In order to meet the needs of public services, some institutions must collect, sort out, process and use citizens' personal information, such as departments and commercial institutions related to telecommunications, medical care, banking and insurance. These institutions in the collection of personal information are a citizen must have certain administrative permission to collect. Chinese current administrative license system for collecting personal information is legislated under the leadership of the ministry of industry and information technology, mainly implemented by the ministry of public security, and constructed under the permission of departments directly under the supervision of various agencies.

Administrative compulsion is a kind of specific administrative act enforced by the counterpart in order to prevent or stop the illegal ACTS, dangerous states and adverse consequences that are happening or may happen. It is indispensable in the process of administrative law enforcement. However, as Chinese current measures for the prior review and on-going inspection of personal information protection are not perfect, it is impossible to take timely compulsory measures for some organizations to disclose personal information, so Chinese administrative compulsory measures for personal information protection are still in a blank stage.

As a kind of remedial measure, administrative punishment is the main administrative measure to deal with the violation of personal information in China. The protection of personal information by Chinese administrative organs has been continuously strengthened in punishment and personal information legislation has been constantly promoted.

IV. CHINESE PERSONAL INFORMATION PROTECTION ADMINISTRATIVE SUPERVISION DILEMMA

A. *The Supervision System Is Not Sound*

As the foundation of the supervision system, the laws and regulations establishing the foundation of the system still have some defects, such as too principled and not specific enough and not strong operability. For example, article 36 of the tort liability law stipulates that the scope of regulating subjects is too narrow, which is only limited to network users and Internet service providers, but ignores the communicators of intermediate behaviors. The scope of personal protection information protection in the general principles of civil law is too narrow. The protection of reputation rights only ignores other personal information rights, such as resume information and hotel check-in information. At the same time, it is not easy to determine whether the violation degree is reached and it is difficult to provide evidence. Even if the lawsuit wins, the amount of compensation is very small. Chinese law on the protection of personal information has been drafted since 2003, but it has not been issued for 14 years. As a result, the protection of personal information lacks a special, standard and authoritative law to restrict the protection and use of personal information rights, which also lays a hidden danger for the improvement of the supervision system [2]. Due to the lack of special laws and regulations, Chinese regulatory system framework has been completed but still there is a close procedure and entity, focus on the global and forget the local, between authority and responsibility, heavy and light punishment to promote such as legacy [3]. From the perspective of management control level, China has formed an embarrassing situation of multi-supervision and multi-neglect under the law without special authority.

Although China has implemented the quantitative and hierarchical management of personal information and risk assessment, it is difficult to operate due to the shortage of talents and practical limitations. In terms of the collection and control of personal information, there has not been a complete set of system, which makes the personal information easy to be disclosed in the process of collection and brings various hidden dangers to citizens, which makes the risk assessment unable to be carried out smoothly. Although the practical problems of promoting the protection of personal information have been greatly improved after many special rectification and actions, these measures are mostly short-term and cannot form a system, let alone achieve the goal of long-term management of personal information security.

B. *Supervision Department Has Multiple Management*

Based on the imperfect supervision system, it is inevitable that the supervision department has multiple management. Regulatory chaos makes information leakage incidents not only repeated, the victims can't clearly find a department for relief. Due to Chinese own economic situation, it is impossible for China to set up a personal information protection agency in each field, as the United States does. Due to its huge population base, China cannot

do everything as the European Union does, so China can only rely on state organs to exercise its power.

Each department has its own functions and objectives, but its nature is to serve the people. However, the way and style of each department are different, so multiple departments must coordinate with each other when dealing with the same matter, which undoubtedly increases the workload of government agencies, human resources are sometimes exhausted, and multi-headed management will also increase the work mistakes.

The limits of the capacity of government regulators can also lead to multiple management. Government personnel have limited professional knowledge, ability and experience in dealing with personal information, but dealing with personal information disclosure is an extremely tedious work, which is more difficult due to the influence of social environment and political environment. Therefore, in dealing with such incidents, it is often handled jointly by multiple departments, which can improve the efficiency, but more likely to cause confusion between departments.

C. *Not Paying Attention to Industry Regulation*

It is precisely because the cornerstone of administrative supervision is unstable, its system is not obvious, and the regulatory departments are chaotic, so that all departments have no interest in the industry's invasion of personal information. Even regulation is an afterthought, not a matter of carrying out prior audits and in-process inspections.

Motor vehicle sales, real estate agents, hospitals and other industries and their employees often have access to a large number of personal information of citizens. Although these industries have the internal system issued on personal information query norms, query electronic information record and protection work opinions, but due to the legal awareness of some practitioners is not strong, enterprise management, implementation is not in place, and there are loopholes in the system. As a result, these industries become a major area of personal information leakage. However, in terms of post-punishment, most of them are only for individual employees, and there is no punishment for the person in charge of the enterprise, which cannot achieve substantial punishment effect.

The reason why personal information is frequently bought and sold and ordinary people are often cheated is that there is a gray interest chain behind it. However, the disclosure of personal information is not stopped. In addition to economic interests, weak industry supervision is also an important reason for the frequent occurrence of such cases.

V. THE REALIZATION PATH OF PERSONAL INFORMATION PROTECTION SUPERVISION

A. *Establishing Clear Personal Information Protection Standards*

Administrative supervision must be supported by laws and regulations. "It cannot be done without express provisions of law", but Chinese current legal system on

personal information is not perfect. For example, the definition of personal information is unclear, the scope is unclear, and the extent of infringement is unclear. Therefore, it is needed to introduce special laws and regulations to regulate and constrain it, so as to provide a basis for supervision and law enforcement and ensure the effectiveness of supervision. In this special law, the most important thing is to formulate clear standards for the protection of personal information, which not only makes administrative law enforcement referable, but also makes citizens know whether their behaviors constitute infringement.

China must speed up the development of a clear national standard for the protection of personal information, so that regulation will become the norm and become more operable [4].

B. Taking the Government as the Main Regulatory Body

Chinese current regulatory body has not yet been clear; often there will be a multi-management or no management situation. One of the prerequisites for personal information protection is the need for a clear regulatory body. In combination with Chinese actual conditions, the author believes that a supervision system should be established with government organs as the main body and other departments as the auxiliary body.

Regulators exist to correct the failure of personal information in the market and restrict the use of personal information rights. It touches the interests of all kinds, so it must keep a certain distance from the regulated, not be affected by the regulator. Due to the existence of their interests, non-governmental organizations such as trade associations cannot achieve a balance between impartiality and interests. Therefore, public power is bound to be required to restrict them in order to maintain market balance and social stability.

As an authoritative department with legislative power and policy implementation power, the government department has strong guiding force and vast scale, so it has unique advantages in the implementation of public credibility. Therefore, it is the best choice to conduct the supervision of personal information led by government departments.

On the basis of the implementation of government departments as the main body of supervision, but also to promote the responsibility system. According to the leadership responsibility system since the establishment of Chinese administrative system, the administrative supervision over the protection of personal information can greatly improve the work efficiency, and people can be held accountable when personal information is leaked, instead of passing the buck to each other. After clarifying the supervision subject, the problems such as the overlapping authority of departments, the inability to track down responsibilities and the lack of supervision caused by the unclear supervision subject will be greatly improved. The back pursuit responsibility system is just like the sword of Damocles hanging on the head of the responsible person,

urging them to perform their duties to ensure the normal operation of the personal information protection supervision system.

C. Strengthening Industry Supervision

The role of administrative supervision should not only stay in the implementation of punishment after the event, but should carry out the whole process of supervision, including the review before the event, the inspection in the event and the punishment after the event. At present, enterprises rely too much on the method of punishment after the fact. However, in terms of personal information protection, there are relatively few provisions on punishment for illegal behaviors in the law, which has not been put into legislation. Therefore, in view of the particularity of personal information protection and the rapid development of the current network, it is necessary to strengthen the supervision of the industry, that is, the implementation of supervision in advance, inspection and punishment after the event three steps.

The personal information of citizens belongs to an important part of personal privacy. From the perspective of law, privacy right, as a right of personality, has irreparable damage. Even though the economic compensation makes up for part of the loss of the victim, it is impossible to recover the personal information that has been leaked. In today's highly developed information technology environment, once personal information is leaked, it means that it may be used illegally to bring a lot of harm and danger. These characteristics of personal information determine that its protection should not only be based on the post-investigation, but also focus on the prevention in advance. This requires the government to strengthen the supervision and approval in advance, prevent the unnecessary collection and use of citizens' personal information, and minimize the possibility of citizens' personal information leakage and theft. Any unit or individual that collects and USES citizens' personal information should report to the regulatory department for approval in advance, otherwise its collection and use is illegal, which can cut off the possibility that personal information is obtained and used illegally at the source.

In the process of personal information supervision, supervision and inspection is essential. In other words, the regulatory authority shall regularly check whether the personal information collected by the enterprise violates the privacy of others, whether the collection process is legal, whether the collection is authorized by the information subject, and whether the collected information is at risk of disclosure. Only through inspection and supervision in doing good deeds can enterprises improve their sense of responsibility for the protection of personal information and effectively reduce the use of improper means to obtain personal information in the industry.

As a common means of administrative supervision, it is also the last resort of ex post facto punishment is also an indispensable link. In the punishment for the violation of personal information in the industry, enterprise should not only punish the employees who disclose personal

information, but also hold the company accountable for the adverse supervision. Only when the person in charge of the company realizes that the protection of personal information is closely related to him and has a reverence for the law can the self-discipline of the industry on the protection of personal information be better realized.

VI. CONCLUSION

In the information age today, personal information has become an indispensable resource, personal information protection system is also urgent to improve. By clarifying the concept of personal information, analyzing the domestic situation and predicament, and referring to foreign legislation and management mode, this paper puts forward some regulatory implementation paths for reference. This article mainly from the supervision system and the legal basis, the administrative supervision main body clear and the industry supervision attention three aspects raise the question, the research question and the solution question.

Under the basic national conditions of China, it is understandable that the supervision of personal information should be carried out by public power. After the authority, scope and responsibility of supervision are clarified; more attention should be paid to the display of judicial effect, the improvement of social self-governance and the improvement of citizens' self-cultivation. Through various means to improve Chinese personal information supervision system, improve the level of personal information management in China.

The road is hard and necessary. Over the past decade or so, China has introduced many bills on personal information and launched many campaigns against personal information. The author firmly believes that with the joint efforts of the state and the people, the protection of personal information in China will go further and further.

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