

The Judicial Standards Analysis on Abuse of the Right to Apply for Government Information Openness

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Abstract—In order to protect the right to know of citizens, legal persons and other organizations better and improve the transparency of the work of government departments, citizens, legal persons and other organizations may apply to the relevant departments for access to relevant information in accordance with the regulations on the Decree of Government Information Openness. However, in the process of practice, there is a phenomenon of abuse of the right to apply for public government information. Such applications, which are not aimed at obtaining government information, not only place a burden on the administrative authorities, but also waste limited administrative resources, so there is a need to develop a set of judicial standards for determining the abuse of the right to apply in order to identify them more effectively and to regulate the abuse of the right to apply for information openness.

Keywords—government information openness; abuse of the right to apply for government information openness; judicial standards

I. INTRODUCTION

With the promulgation of the regulations on the Decree of Government Information Openness, the right of citizens to obtain government information has been better protected. At the same time, in judicial practice, there is also an abuse of the right to apply for government information openness. What is "abuse of the right to apply for government information openness" is not explicitly stated in the Decree so it is first necessary to define this concept. Abuse of rights refers to the fact that the obligee exercises his rights beyond the legal scope and legislative purpose. The abuse of the application power of government information openness is the right given by the Decree to apply to the administrative organs for the openness of government information, but its application violates the scope of the exercise of the rights stipulated in the Decree and its own legislative purpose.

Throughout the cases of abuse of the right to apply for government information openness in recent years, the abuse of the right of application by the parties has seriously affected the normal development of the daily work of the administrative organs. Taking *Li Chongneng v. Hongjiang Municipal People's*

Government as an example¹, the plaintiff filed up to 1183 identical applications for government information openness from 2015 to 2016 to Hongjiang Municipal people's Government, Hongjiang Public Security Bureau and other departments. This kind of behavior seriously affects the normal information openness work of government departments, and causes a lot of waste of public resources. Therefore, it is necessary to regulate this kind of abuse of the right to apply for government information, which is not for the purpose of applying for government information.

In the current legislation, there is no express provision on the constituent elements of "Abuse of the Right to Apply for Government Information Openness". While in practice, the Supreme Court tries to publish scattered elements through some typical cases to provide a reference for the adjudication of such cases. However, this way is lack of system, integrity, clear judgment standard and lack of laws and regulations to determine whether the actor constitutes an abuse of the right to apply, which can easily lead to the infringement of citizens' right to know in practice. In order to protect citizens' right to know and regulate the abuse of the right to apply for government information openness, it is particularly important for the court to construct a set of systematic, complete and scientific judicial regulation standards.

II. AN INTERPRETATION OF THE EXISTING JUDICIAL STANDARDS ON ABUSE OF THE RIGHT TO APPLY FOR GOVERNMENT INFORMATION OPENNESS

By using "Abuse of the Right to Apply for Government Information Openness" as the key word in China Judgments Online, it can be found that by the end of 2018, 350 relevant records have been searched. Through the study of these adjudicative cases, some judicial standards of abusing the application power of government information openness as determined by the court in practice are sorted out. Here takes *Lu Hongxia v. Nantong Development and Reform Commission Government Information Public reply case*, which was published in 2015 by the Supreme people's Court official, as a

¹ The Administrative Decision [2017] XHZ No. 1619 of Hunan Higher People's Court.

typical case to analyze. Through this case, the court summed up four clear characteristics.

A. The Number of Applications Is High as Well as the Frequency

One of the typical characteristics of abusing the right of application for openness of government information is that the parties concerned apply to the relevant departments many times and frequently within a certain period of time, ranging from more than ten to thousands of times. Taking the Lu Hongxia case as an example, Lu Hongxia and her family have submitted at least 94 applications for openness of government information to the Nantong Municipal People's Government and its related departments since 2014. On January 2, 2014, 10 public applications were submitted to the Nantong People's Government [2].

B. The Applications Submitted Are Similar and the Contents Are Duplicated

Parties who abuse the right to apply for openness of government information often apply to multiple administrative organs on the same subject matter, or apply to the same organ for openness on the basis of similar contents. For example, in the case of Wang Dafu v. the people's Government of Dalang Town in Dongguan City, in order to achieve the purpose of illegally occupying 200 square meters of land in the level village, Wang Dafu repeatedly revolved around the demolition and relocation of the whole town of Dalang Town in July 2017, and the town belongs to the enterprise finance, planning and other information to the Dalang town government to submit information openness applications of more than a hundred [3].

C. The Contents of the Application Are All-inclusive

The applicant applies for a wide range of applications, some of which are not based on their own production, life and scientific research (hereinafter referred to as "three needs"). Some applicants even apply for information openness to the relevant authorities knowing that the information they apply for does not fall within the scope specified in the Decree on openness of government information. Taking Li Jun v. Yingkou Municipal People's Government Information openness case as an example, the parties in this case filed an all-inclusive application for information openness in order to realize their own improper interests. The contents of its application revolve around the Minking River Reconstruction Project, covering land, construction planning, demolition, audit, finance, price supervision, public security, and administrative supervision and pension industry support policies and so on [4].

D. The Purpose of the Application Is Inconsistent with the Relevant Provisions of the Decree on Openness of Government Information

The parties who abuse the right to apply for government information openness often do not aim at obtaining the "three needs" information related to themselves, but often apply for revenge, pressure, maximization of their own interests and so on. For example, in the case of Zhang Zhifa v. the People's Government of Kangle Town, Fengjie County, Chongqing City, the purpose of Zhang Zhifa's application for the openness of

government information is not to obtain and understand the government information itself in accordance with the law, but to pass a continuous, large number of applications, reconsideration and litigation to express dissatisfaction and put pressure on the government and relevant departments to maximize the compensation for the attachment of their contracted land⁵.

III. THE DEFECTS OF THE EXISTING JUDICIAL STANDARDS FOR THE ABUSE OF THE RIGHT TO APPLY FOR GOVERNMENT INFORMATION OPENNESS

Looking at the cases of abuse of the application power of government information openness identified by the court in the realistic judgment, it can be seen that the existing identification standards are not uniform, and in some recent judicial documents, there are different identification elements from those in the Lu Hongxia case. This makes us think about whether the current judicial standards can be applied repeatedly to all such cases, and whether a reasonable result can be obtained through the numerous and varied cases in the face of cases.

A. There Is Unreasonable Parts in Existing Standards

In existing decisions, the number and frequency of applications filed by the parties are often taken into account. However, the words such as "large number" and "high frequency" are too abstract in practice to determine the abuse of facts. Some applicants have applied for openness of government information only once, but the purpose of their application is to retaliate against the administrative authorities, and the content of their applications has nothing to do with their own "three needs". In this case, it can also constitute an abuse of the right to apply. However, there are more than dozens of information openness applications filed by the applicant with the relevant departments, but due to dereliction of duty and other reasons, the relevant departments have not received a legitimate reply, in which case the parties may also constitute the legitimate exercise of legitimate rights.

Besides, the appropriateness of the word "all-inclusive" as one of the criteria for judging abuse of an application is also controversial. The applicant's application based on his or her own "three needs" may contain a number of matters that comply with the relevant provisions of the Decree and do not constitute an abuse of rights. In this case, the content of the application is also in line with the scope of the word "all-inclusive". The ambiguity and uncertainty of the meaning of this word may lead to unnecessary errors in the determination of facts in practice.

B. Existing Standards Are Not Subject to Repeated Applicability

However, by studying the judicial cases in recent years, it is found that the court has given some new elements to determine the abuse of the right of application in the judicial documents, and is no longer limited to the four kinds given in the Lu Hongxia case. For example, the parties who abuse the application power apply at will and make arbitrary applications without distinction between the application departments and so

on. The emergence of these new elements reflects that the original consideration of the abuse of the right of application is based on the facts of the specific case, rather than the universal characteristic standard of all such cases. It is controversial whether such identification standards based on specific cases can be applied repeatedly in practice.

C. No Enough Attention to the Motivation of the Applicant in the Existing Standards

When reading the judicial documents, it can often be found that the court has written expressions similar to "the true purpose of the parties is to realize their own illegal rights and interests" as one of the elements of the abuse of rights. According to the existing standards, the court, in determining whether an application constitutes an abuse of rights, only stipulates that the purpose of the applicant cannot be inconsistent with the relevant provisions of the Decree. The specific provisions of the Decree show that the party concerned is neutral in filing an application for openness of information out of good faith or malice. Therefore, it is worth paying more attention to whether it is reasonable to consider the non-bona fide application purpose as one of the elements to determine the abuse of the right of application in the judicial documents in order to further demonstrate its rationality.

IV. THE RECONSTRUCTION OF THE JUDICIAL STANDARD OF THE ABUSE OF THE RIGHT TO APPLY FOR GOVERNMENT INFORMATION OPENNESS

Abuse itself belongs to uncertain legal concept, so it is difficult to form a standard once and for all, so it is more accurate and reasonable to comprehensively judge this behavior in the form of establishing a relatively complete and objective framework system. In order to establish the judicial definition standard framework of abusing the application power of government information openness, it is necessary to clarify the constituent elements of "abuse of rights". For the constituent elements of abuse of rights, some common elements can be summed up by referring to the abuse of civil rights, such as the obligee objectively exercising this right; subjectively having fault; objectively causing damage consequences; violating the legislative purpose. Through these common elements, a framework reference can be provided for the determination of abuse of the right of public application of government information. In the formulation of specific elements, in addition to regulating the abuse of application power by applicants, it is also necessary to consider the balance between administrative and judicial discretion and citizens' right to know. In summary, the people's court should judge whether the right to apply for government information disclosure has been abused from the following aspects in practice.

A. Subjective Purpose of the Applicant

In Article 13 of the Decree, the applicant is required to file an application for openness of information in accordance with the "three needs". In addition, it should also be satisfied in order to promote the transparency of government work, promote administration according to law, and give full play to the service role of government information in the production,

life, and economic and social activities of the people. It can be seen that the Decree are neutral for the parties to file an application for information openness out of good faith or malice, but they do not explicitly exclude the examination and exploration of the purpose of the parties' applications by the administrative organs. In practice, the parties may apply for the application knowing that the application is not in accordance with the provisions of the laws and regulations, or for the purpose of using the application to achieve their illegal purpose. This kind of behavior is easy to lead to the waste of administrative resources and judicial resources, which needs to be regulated. Therefore, it is necessary to regard malicious motivation as one of the elements to judge the abuse of application power. However, subjective psychology is difficult to judge. From the legislative purpose of the Decree, it is mainly to better protect citizens' right to know, so the court should take a cautious attitude in its determination. This requires that when drawing a conclusion, the administrative organ should fully explain the facts and reasons on which it is based, and avoid being one-sided.

B. Subject Qualification of Applicant

The prerequisite for the applicant to abuse the right of application for openness of government information is that the applicant himself has the right to obtain government information. If the applicant is not a qualified subject, it may constitute unauthorized or ultra vires behavior. According to our definition of abuse of the right to apply for government information openness, it is necessary to have the right to act in order to constitute the abuse of rights. According to the Decree, citizens, legal persons and other organizations can file applications for openness of government information, which shows that there are no special restrictions on the subject of access to government information.

C. Application Content of Applicant

In judging whether the applicant's application behavior constitutes an abuse of rights, it is also the key to see the status of the information he is applying for. If the applicant is aware that the published information is still being applied for, or if he does not know in advance that the contents of the application have been made public but has not given up the application without reasonable reason after being informed by the administrative authorities of the way and means of inspection, It can constitute an abuse of the right to apply. However, if the information applied for by the party concerned should be made public and the administrative organ does not disclose it, the applicant's public application for this information shall not be an abuse of rights, and the administrative organ shall reply to the applicant in accordance with the law.

If the information applied for by the applicant belongs to the scope of non-governmental information or the content of the application for disclosure of information filed by the applicant is not within the scope of the disclosure of the information of the administrative organ, the administrative organ shall take the initiative to fulfill its obligation of interpretation, Inform the parties to change the content of the application or file a separate application. In practice, there are some parties who file public applications for impossible

information out of pastime and revenge. In the above cases, if the party still insists on filing an application of the same or similar content, the applicant may constitute an abuse of the right to apply.

It is generally considered that the content of the information to be disclosed in the normal application should be relatively definite and the content is related to each other, and this seemingly complicated and trivial information is often closely related to the realization of the applicant's legitimate application purpose. Therefore, when the application content of the applicant is trivial and there is no connection between the information, and the behavior seriously hinders the daily work of the administrative organ, it can be regarded as an abuse of the right to apply for information openness.

Finally, the applicant repeatedly filed an application for the same, similar content, and the applicant wrote insults and slander in the application document. Such arbitrary applications may be deemed to be an abuse of the right of application by harassing the administrative authorities or by expressing their dissatisfaction with the administrative organs in the application documents and denigrating them, and insulting the staff members concerned.

D. Application Method of Applicant

The number of applications is large and the frequency is often regarded as one of the elements for the abuse of application power. Although there is no limit on the number and frequency of information disclosure applications filed by citizens in the Decree, the frequent filing of huge information openness applications will inevitably increase the workload of administrative organs and lead to the waste of administrative resources. At the same time, the administrative organs are dealing with a large number of repeated or similar information openness applications, which is bound to affect the efficiency of other parties who normally exercise information openness applications to obtain information. However, caution should also be taken when determining whether the applicant's application method is reasonable, otherwise it may infringe the applicant's right to know. If some applicants frequently file applications for disclosure of information with similar contents and a large number of information, it is because the administrative organs have failed to perform their statutory duties and disclose the corresponding information to the applicants in a timely manner in accordance with the application, in this instance, the applicant is in the normal and legal exercise of his right to know. Therefore, in judging whether the applicant's application method is reasonable, it is recommended not to only take the quantity and frequency as a separate criterion, but also combine the content of the application submitted by the party concerned, and whether it will cause the administrative organ to exceed the tolerance limit, anger, affect the normal rights of other citizens to make a comprehensive judgment.

E. The Result of Damage to the Act of Application

At present, the purpose of the Decree is still to protect citizens' right to know, which requires that the consequences caused by the applicant need to be serious. If the applicant's application behavior only increases the work burden of the

administrative organ in the general sense, it should not be regarded as an abuse of the act. Only when the effects of such consequences can seriously interfere with the normal working order of the administrative organs and even the daily work of the administrative organs, or if the information application of other citizens cannot be processed in time or even effectively, it can be attributed to the abuse of the right to apply. This kind of judgment of severity should be the serious standard defined by the cognition of the general public. In addition, in order to protect the citizen's right to know, the administrative organ should also explain that there is a causal relationship between the citizen's application behavior and the consequences of serious damage.

F. Whether It Is Contrary to the Purpose of Legislation

The exercise of any right must be within the scope stipulated by law, and the enactment of law must be within the scope of legislative purpose. Therefore, when judging whether an act constitutes an abuse of the right to apply for government information disclosure, there is a criterion, that is, it must not violate the legislative purpose. Looking at the Decree, it can be seen that its legislative purpose is mainly to protect citizens' right to know, to improve the transparency of government work, to promote the administration of administrative organs in accordance with the law and to serve the production and life of the people at the same time. If the applicant's application behavior is contrary to the above purpose, the information openness application is intended to "cover up the illegal purpose in a legal form", then it may constitute an abuse of the right to apply.

In practice, the legislative purpose of how to specifically find that the application behavior is contrary to the regulations is mainly to judge the true purpose of the applicant to file the application. However, the purpose is subjective, and the administrative organs need to make a comprehensive judgment according to the framework of the measurement standards in order to prevent the realization of citizens' right to know by generalizing and restricting the realization of citizens' right to know. At the same time, while judging the purpose, it is also necessary to prevent a small number of legitimate and reasonable information openness applications from being denied because most of the parties put forward a large number of information applications that do not conform to the legislative purpose.

V. CONCLUSION

The Decree on openness of government information is formulated earlier, and there are many imperfections in the content, including the blank of the abuse of the right of application for openness of government information. Although the Lu Hongxia case, published in the Communiqué, gave a brief guidance on the identification of this issue from the judicial field, there are still many defects and shortcomings in the judicial practice of this kind of norms from individual cases. Therefore, in order to better regulate such problems, it is necessary to think about the establishment of a more perfect and operational judicial identification standard from the applicant's subjective purpose, the subject qualification, the application content and the way, the result of the damage, the

violation of the legislative purpose and so on so that to achieve the balance between protecting citizens' right to know and restricting the discretion of administrative organs in practice.

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