



# On the Legislative Status and Improvement of Public Data Openness in China

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**Abstract.** Formulating regulations on the development and utilization of public data is a necessary activity to unify local legislation in China, overcome the current difficulties in public data development and utilization, and achieve reasonable development and utilization of public data. This article explores the development process of public data development and utilization in developed countries, and further explores the legislative status and shortcomings of public data openness in China.

**Keywords:** public data; Open; Basic principles; Legislative recommendations

## 1 Introduction

At present, China has not yet formed a national unified regulation for public data openness, but in recent years, local regulations related to public data openness have been established and implemented nationwide. The openness of public data has begun to take shape in China. However, it is still in its infancy, and in this process, various challenges and difficulties will inevitably be encountered. Therefore, it is necessary to improve the deficiencies of China's legal system. This article studies the legislative evolution of public data openness in Western countries, and combines it with the actual situation of public data openness legislation in China. It briefly analyzes the legislative issues of public data openness in China at the current stage, and proposes targeted ideas for further improving the legal system of public data openness in China.

## **2 Concept and characteristics of public data**

### **2.1 Public Data Concept**

Firstly, the common characteristics of public data. The fact that the data is collected by a public organization does not necessarily mean that the data is public, but rather depends on whether its content is public. Any publicly available data should be included in the category of public data in order to provide better services to the public.

At present, there are generally several definitions of "public data" in the academic community: Moliko et al. defined the public data as "the public", regarded "the public" as the subject of "public data", and defined it as "the government", and "the public" is an important component of "society". Xia Yikun believes that public data resources are a very broad field that not all governments can manage. Hu Ling believes that the definition of public data can be divided into three types: firstly, the information obtained during the performance of responsibilities by public authorities; The second is the data collected during the process of authorizing private institutions or individuals to exercise specific public functions by public authorities; The third is data collected in the public domain that is not authorized by the government and involves public interests. Based on the above theory, the author defines public data as various data resources collected by national administrative agencies and public institutions performing public management and service functions in the process of fulfilling their duties in accordance with the law.

### **2.2 Characteristics of Public Data**

Secondly, the "raw" nature of public data. "Original" reflects the integrity and Reusability of public data from the physical properties of data. For public data, it needs to maintain high granularity as much as possible and cannot be modified or processed<sup>[1]</sup>.

## **3 The principles and functions of public data openness**

With the development of Big data, the opening of public data has become a global trend. Since the release of the US data portal Data.gov in 2009, the movement for public data openness has rapidly developed around the world. The United States, the United Kingdom, South Africa, Brazil, Indonesia, Mexico, Norway, and the Philippines signed the Open Data Declaration in September 2011, establishing an Open Government Partnership (OGP). Currently, over 70 countries have joined the OGP. From a global perspective, open public data has become a common choice for countries, with openness as the principle and non-openness as the exception.

The opening of public data is of great benefit to the public. When public data is only gathered in the hands of the government and the public cannot easily access reliable public data, citizens' Freedom of thought is difficult to be guaranteed. Only when citizens have the right to access public data can they better form their own ideas and opinions.

## 4 International legal basis for open public data and main practices of countries around the world

The provisions of the United Nations on freedom of information, and civil and political rights have laid a solid legal foundation for global public data openness. Article 19 of the United Nations Universal Declaration of Human Rights (1948) stipulates: "Everyone has the right to freedom of opinion and expression; this right includes the freedom to hold opinions without interference, as well as the freedom to seek, receive, and transmit information and ideas through any medium. In 1964, the first session of the United Nations General Assembly passed resolution 59 (I): "Freedom of information is a fundamental human right". Article 1 of the International Covenant on Civil and Political Rights (1966) stipulates that " All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. ". The Universal Declaration of Human Rights, the Civil and Political Rights and other documents all stipulate the content of public data opening, which has laid a solid foundation for public data opening to become an international consensus.

The basic consensus reached by multiple governments and the international community is to promote the openness of public data with prudential supervision as the core. However, there are significant differences between countries in the specific implementation methods and supervision of public data openness. Developed countries such as the United States, Britain, and France have started early in data openness and achieved good results. Over the past decade, they have gradually formed a relatively mature public data openness system and constructed various forms of security protection systems. This effectively solves the potential risks brought by data openness in areas such as personal privacy, trade secrets, and national security.

Taking developed countries as an example, the United States has established a series of laws and regulations regulating data openness, such as the Freedom of Information Law, Privacy Act, Open Government Directive, Open Government Data Act, etc.<sup>[2]</sup>. In 2009, the UK released the advocacy plan of "Making public data public" and launched the design of Data.gov.uk, a data open platform. Subsequently, the introduction of relevant regulations such as the Freedom of Information Act and the Re-use of Public Sector Information Regulations provided a legal basis for the openness of public data<sup>[3]</sup>. The French government has established special laws such as the Administrative Document Disclosure Act and the Digital Republic Act to ensure the orderly opening of public data. The "Handbook on Open and Shared Public Data" issued by France in 2013 guides its public sector to further understand the importance of open data policies and contribute to the openness of public data<sup>[4]</sup>.

## 5 The Development Status of Public Data Openness in China

Opening public data is beneficial for safeguarding citizens' right to know and promoting accelerated social development. However, the current legal construction in China is still in its infancy. At present, Data Security Law of the People's Republic of China has

made more systematic provisions on the security and disclosure of public data, which is a law specifically regulating data security. The laws and regulations on data protection in the Cybersecurity Law of the People's Republic of China have laid the foundation for public data openness. The promulgation of such laws and regulations as the Decree of Government Information Openness in 2007, the Outline of National Formalization Development Strategy in 2016, the Outline of Action for Promoting Big data Development, and the Interim Measures for the Sharing and Management of Government Information Resources in 2016 have demonstrated that China has made great progress in public data disclosure. At the local level, China's provinces and cities have actively responded to the demand for Big data policies and have successively introduced data opening regulations or methods that adapt to local realities. Recently, Shanghai announced the implementation of the "Implementation Measures for Public Data Sharing in Shanghai (Trial)", and Shandong Province implemented the "Shandong Province Public Data Opening Measures" from April 1, 2022. Such measures are constantly emerging, and these series of measures help to further standardize the management of public data sharing<sup>[5]</sup>.

However, at present, China has not yet introduced laws and regulations for unified management of data. In terms of who collects data, who opens it up, to whom it is open, the standards for data opening, and the paths for opening it up, China is still in the exploratory stage.

## **6 The necessity of formulating regulations on the development and utilization of public data in China**

In the era of big data, the openness of a country's public data to a certain extent determines whether it can occupy a dominant position in international competition. China is increasingly aware of the important strategic position of big data development. The State Council, in the 14th Five Year Plan for Digital Economy Development, proposed that China should initially establish a data Factor market system in 2025. The necessity of formulating regulations on the development and utilization of public data in China is mainly reflected in three aspects:

### **6.1 The development and utilization of public data has special characteristics and requires specialized and unified legislation.**

The non-exclusive, non-competitive, and exploitable characteristics of public data determine that it will inevitably face issues such as information protection during the development and utilization process. The reasonable development and utilization of public data resources requires specialized and unified legislation as a prerequisite.

## **6.2 There are many difficulties in the development and utilization of public data in China, and unified legislation is needed to provide solutions.**

At present, there are problems in the development and utilization of public data in China, such as incomplete systems, non-standard management, low utilization rate of public data, and lack of legal basis for public data ownership. Only through unified legislation can the effective utilization of public data resources be achieved<sup>[6]</sup>.

## **6.3 Local legislation has a low level of effectiveness and lacks a complete legal regulatory system, requiring unified legislative coordination and overall planning.**

At present, there are varying degrees of differences in the definition, classification, authorization scope, and other contents of public data in local legislation. This not only reduces the efficiency and effectiveness of the construction of the regulatory system for the development and utilization of public data in China to a certain extent, but also hinders the overall utilization of public data resources in China. Therefore, it is necessary to establish unified regulations for the development and utilization of public data<sup>[7]</sup>.

# **7 Suggestions for Improving Public Data Legislation in China**

Based on the "Regulations on the Decree of Government Information Openness" which stipulate "Active Disclosure" and "Voluntary Disclosure", the openness of public data has evolved into two principles: "Active disclosure" and "Voluntary disclosure". Regardless of the method used, the public can access unprocessed public data. However, in practical operation, publicly available information is difficult for the public to obtain. Based on the above practical situation, the author proposes the following suggestions for the opening of public data in China:

## **7.1 Improve the legal system for public data openness**

At present, based on the current situation in our country, legislation can be adopted in a gradual and standardized manner. Even if the local government tries to implement it first, it can also be seen as a further improvement of the Information Disclosure Law. At present, the legislation on public data openness by governments in various regions is relatively complete. However, based on the current situation, the issue of limited legislative authority by the central government over local areas still needs to be addressed through unified legislation.

## **7.2 Clarify the scope and type of public data**

### **Clarify the scope of public data.**

Specifically, in theory, all public data generated by the government in fulfilling its public responsibilities should be open. The data collected by enterprises, individuals,

organizations, and other institutions, although not based on public responsibilities, should also be included in the scope of public data openness when it is closely related to the public interest and if not opened, it will seriously harm the public interest.

### **Classify public data.**

By defining public data, we can redefine the types of public data, with the aim of distinguishing different levels of public data and establishing corresponding disclosure models accordingly. Referring to Delia's data classification method, public data can be roughly divided into publicly available data, public welfare available data, and data that may generate profits based on the degree of commonality<sup>[8]</sup>.

### **Standardize the legal relationships of relevant subjects.**

The state should define the rights holders of public data openness and clarify the ownership of public data. Public data is provided by the government and its authorized agencies, and the required fees are supported by taxation. Therefore, the ownership of public data should be shared by the entire population.

### **Improve supervision and relief mechanisms.**

When formulating relevant laws and regulations on public data openness, special attention should be paid to data supervision, and openness should not be emphasized over supervision. In terms of regulatory channels, the author believes to regulate data access permissions, data security audit behaviors, etc.

### **Participate in international public data openness activities.**

China's Platform for Action to Promote the Development of Big data indicates that China must participate in the formulation of standards related to international public data opening, strive to improve the international public data opening mechanism, promote international collaboration, and make rational use of international resources<sup>[9]</sup>.

## **8 Conclusion**

At present, China has not yet formed a national unified regulation for public data openness, but in recent years, local regulations related to public data openness have been established and implemented nationwide. This article studies the legislative evolution of public data openness in Western countries and combines it with the current situation of public data openness legislation in China. It briefly analyzes the legislative issues of public data openness in China at the current stage and proposes targeted ideas for further improving the legal system of public data openness in China.

Overall, publicly available data is a long-term process. We should combine advanced international experience with the reality of China's public data openness, and leverage strengths and avoid weaknesses. Meanwhile, through mutual cooperation with international organizations and countries, we can make reasonable use of international data

resources and contribute to promoting the openness of public data in China. I believe that with the strong support of the country, China's data openness legislative system will be more perfect in the future.

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