

## Analysis on Open Government Information Under the Perspective of Administrative Power and Administrative System

TAN Qingyong<sup>[a],\*</sup>

<sup>[a]</sup>Doctoral Candidate, School of Law, China University of Political Science and Law, Beijing, China.

\*Corresponding author.

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### Abstract

This paper starts from administrative power and administrative system and believes that the tradition of administrative power, administrative power distribution and operation system, administrative power self-isolation and alienation tendencies, administrative structure and traditional bureaucratic system have a significant impact on the construction of open government information system. At the same time, it analyzes the beneficial factors to the open government information and believes that the proposal of modern concept of national governance, the construction and continuous practice of relative centralization of government power system and the continuous development of e-government will contribute to the development of open government information.

**Key words:** Administrative power, Administrative system; Open government information

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### INTRODUCTION

There is no doubt that government information reflects some power. Open government information means that part of the unique power of the Government will be digested in society and among individuals in an open

way and part of the power which should be exercised by the government will be eliminated after opened and transferred into power operated in a social or civic self-determination way.<sup>1</sup> Government information and power are born with inherent relationship. The various obstacles in the operation of open government information mechanism of nature are the reflection of mutually unsuited situation between the original power system and open government information power digestion. Thus, the exploration of the cause of the problems in open government information is inseparable from the analysis of the problem of the current distribution of administrative power and its operational mechanism. Meanwhile, the power distribution system and its operational mechanism determine the composition and mode of operation of China's administrative system. From this perspective, the exploration of problems in open government information is also inseparable from the analysis of the institutional framework of the current administrative organization. Administrative power and administrative system have deeply influenced the practice of open government information. To really achieve the purpose of open government information, while improving open government information legislation, we must re-organize and re-review China's administrative power and relative problems of administrative system. This is the foundation and premise to construction open government information system in China.

<sup>1</sup> Of course, not all government information disclosure will lead to the disappearance of government power, but it is undeniable that through open government information, matters which previously need to be led or guided by the government may be achieved by social or individual citizens' self-determination. Thus, to some extent, government power would no longer intervene in such matters.

# 1. ANALYSIS OF OPEN GOVERNMENT INFORMATION UNDER THE PERSPECTIVE OF ADMINISTRATIVE POWER

## 1.1 Administrative Power Configuration

As mentioned earlier, open government information on nature is to digest part of original administrative power in society and individuals. Therefore, open government information relates to the configuration of governmental power and the smooth operation of open government information is inseparable from scientific analysis of administrative power configuration. The configuration problem of government power mainly includes three aspects: it first reflects in the definition of the relationship between the government and the market. The relationship between the government and the market on nature is reflected in the boundary and scope of government power. Overall, China's government is currently in full exit status with the aim to play a greater basic role of the market in resource allocation and reduce unnecessary government intervention. Less approval and licensing procedures and the transfer from a focus on ex ante regulatory supervision to post supervision are specific reflections. However, while the government is gradually loosening the control over the market, there are also phenomena in which the government has stuck at where it should have quit or it has quit at where it should not. The boundary between the government and the market needs to be defined more scientifically. Second, it is reflected in the longitudinal power distribution, i.e. the decentralization between the central and local government. As this issue is concerned, our country has the problem of high concentration of administrative power. "In the internal administrative power system, administrative power is highly centralized from local governments to the central government, from the lower level of government to the higher levels of government and from administrative organizations and specific staff members to the executive head. The centralization of administrative power is a longitudinal centralization, reflecting the relationship between all levels of government and between governmental organizations and staff and the executive heads in the operation of administrative power. in relation to the central government and the higher levels of government, local governments and lower levels of government lack complete organizational executive power and financial power and they only have limited legislative power (and not all local governments are vested with executive legislative power), ..." (Shi, 2010) China's administrative power in longitudinal distribution is mainly presented as "top-heavy" structure. With the higher administrative level, they have the greater power. The central

government has greater power and local governments have limited power. Finally, it is reflected in the transverse power distribution, i.e. power segmentation between transverse sectors. From the transverse aspect, the power of administrative bodies at the same level is very dispersed and law enforcement functions of different administrative departments overlap. The operating mechanism of China's administrative power is the product of the almighty country. The highly dense state power network covers every corner of the society (Liu, 2010). With the advent of the administrative state, administrative power penetrates into all areas of society on a larger scale and it becomes dispersed. Our current power configuration and partitioning mechanism have a close relationship to government information and has had a major impact on our open government information. Mapping the three problems to open government information domain, first the boundary issue between the government and the market is related to the control subject and information flow issues. The government and the market are in a dynamics relation to each other. The larger the boundary of government power becomes, the free work space of the market would be compressed; the smaller the boundary of government power becomes, the greater the free space of market operation will be. However, what history teaches us is that the border of the government and the market should be reasonably defined and neither can be neglected or become extreme. In our case, although the state government is in an exit status, the overall administrative power operation boundary power is too large and the market is under government control and repression for a long time. In such an environment, when the government is in intervention in the market economic order and social order, because of the leading and dominant position of its powers, the vast majority of information generated in the process will be controlled by the government. Information generated in the market and in society, because of government intervention, with power operation as its tools and instruments, will be incorporated into government information category even when a lot of information should not be part of government information and this will reduce the total amount of the free market information flow. Information overly held in government's hands will become hidden information and that is not conducive to market players to grasp and control information. The more closely power and information combine, the more likely that the information will become secrecy. Since *Government Information Disclosure Ordinance* was promulgated 2008, our government information disclosure application has surged year after year, which in essence reflects that in the long-term government-led market environment, the information is mainly controlled by the government and the free market information is very limited. Once we

give civil and social citizens the right to apply for opening government information, the market and the community have shown tremendous demand for information. From another point of view, through the disclosure of government information, government information is disclosed to society or individuals. This will fully play the serving role of government information in people's production life and economic society, reflect government decentralization to market, gradually reducing control of the market and will further promote the rational construction of the border between government power and operation of the market. Moreover, open government information will change the traditional practice of government-led information flow. Giving citizens the right to apply for disclosing government information and the government disclosing information as applied will promote the free flow of information, show the value and utility of information in the market in a greater degree and enhance the vitality of the market. Also on the decentralization of central and local government, the excessive concentration of power of the central government is not conducive to carry out the work of open government information. We must recognize that the higher the rank of power is, the closer it comes to the core national interests and it will also be more inclined to secrecy. Compared with interests in high-rank power, lower rank of power is farther from core national interests and easier to open. Currently, our administrative power longitudinal decentralization demonstrates that the central power is too much strong, causing the result that the central government control greater information and the information distribution is an inverted triangle shape. With the exception that the central government information is more sensitive, the ability of the central government to respond to the demands of citizens is slower than local governments. Therefore, the current mechanism of longitudinal decentralization of power has centralized powers which can be handed over local government to the central government, leading to poor disclosure of government information. This is not conducive to the maximization and the timeliness of government information disclosure. In terms of future, we need further division of the administrative authority of central and local government, give greater powers to local governments and fully play the initiative of local governments in the government information disclosure. Finally, from the horizontal fragmentation of government power, the current division of executive power is in lateral decentralization and the overlapping of administrative powers is serious, resulting in disperse of distribution of government information. The corresponding status of information and administrative power is one to many. Because of this, we must spend a certain amount of time and cost in the government information disclosure process to coordinate government information disclosure. This issue will be

discussed in depth in the administrative system part.

## **1.2 Highly Authoritative, Monopolized and Closed Traditional Administrative Power**

Culture has an important role on the construction of a system. Our long-term prevailing culture of secrecy has a significant impact on the construction of our administrative power system and its exercise. This is mainly reflected in the absolute authority, independence and closeness of traditional administrative power (Guan, 2011). Its authority, monopoly, closeness is mainly reflected in the following aspects: First, the administrative bodies are unitary. As the only executive bodies, administrative agencies in this single administrative body system construction, "with the central authority at the center, emphasize obedience of local government to the central government and emphasize society's dependence on the government. The exercise of power is in one-way, which is command, obedience and control. The supply of the executive entity system is completely monopolized by the central government." (Xue, 2007) Under a single administrative body system, the administrative power is considered as a privilege of the government and it is not allowed to be shared and divided. Second, from the perspective of the relationship between administrative power and other power, the exercise of administrative power is relatively independent. On the one hand, the absolute authority of administrative power excludes the question of the public on administration authority, such as the qualitative characteristics of administrative acts. On the other hand, the administrative power is in a stronger position compared with judicial power. Prior to 1989, China's administrative power was not subject to judicial control. With the promulgation of the 1989 *Administrative Procedure Law*, the administrative powers of administrative agencies have been incorporated into the judicial review system. However, because traditionally in the system judiciary agencies are weak and they are heavily dependent on the local government in financial and other aspects, the effect of judiciary agencies in overseeing administrative powers is not obvious. Meanwhile, the exercise of the administrative acts is related to professional and technical aspects. In order to better promote the administrative power to serve public interests, administrative powers enjoy greater discretion in the exercise process, which further increases the difficulty of controlling the administrative power. The judiciary agencies are often reluctant to change the administrative acts that an administrative organ has made. Third, the exercise process of administrative power is very closed. On the one hand, during the exercise of administrative power, the decision-making, execution and supervision and other related aspects are controlled in the same hands of administrative organs

and they are not separated. Various aspects are in the internal closed administrative organ system, with greatly closeness. On the other hand, the exercise procedures of administrative power are quite arbitrary and secrecy. Before the introduction of the *Administrative Punishment Law*, in the exercise of administrative power, administrative authorities do not undertake the obligations to inform the administrative relative person the administrative penalty facts, reasons and the basis, which reflect the secrecy of the exercise of power. From the analysis of the traditional power we can find that, in terms of administrative power, in the absence of effective institutional constraints, administrative power tended to run in a self-enclosed status. The disclosure of government information has to get rid of this tendency to be closed so that the power can be run in the sunshine. The two will inevitably conflict with each other

### 1.3 The “Alienation” of Administrative Power

Publicity is undoubtedly the most fundamental attribute of administrative power. According to the social contract theory point of view, in order to protect their own interests, people will build contracts to transfer part of their rights to form their own country. The state administrative authority should reflect its public nature to promote the growth of the public interest of the community. In order to effectively exercise executive power, executive power is bound to be allocated vertically and horizontally to national servant staff at different positions. When National servant staff has the status of civil servants, they also have the individual “private” identity in society. According to public choice theory, public officials in politics are like rational people in market economy and they will choose the most favorable behavior, especially when the oversight mechanisms are inadequate, alienation of administrative power becomes possible and practical (liu, 2005). On the so-called alienation of administrative power, scholars have different opinions, but they all reveal its nature: That is, the departure of administrative authority from its public nature, tending to privatization and authorization. Therefore, in essence, alienation of administrative power means it violates the original intention power players when they establish certain rights and violates the purpose of transferring the rights of the public, resulting that administrative power cannot serve public interests and hinder the protection and realization of rights of the public (Kong, 2012). The concentrated expression is that administrative interests are turned to departments and administrative interests are privatized. Administrative interests turning to departments make the ultimate destination of administrative powers is set to promote the interest growth of their own administrative departments, which is a manifestation of small collectivism. The privatization of administration interests means the executive staff abuses the executive power on their

hand for personal gains. This is personal corruption. It can be said that it is the unadjusted contradiction between the publicity of administrative power and the privatization of administrative power interests that plays an important role in hindering government information disclosure. Under the existing uncompleted mechanisms, the administrative interests turning to departments and its privatization have occurred more or less. Facing open government information, the administrative organs will inevitably show some resistance. “Sunshine is the best preservative”. Open government information will lead to the phenomenon that administrative interests are turned into departments and privatized have nowhere to hide. From this perspective, open government information will greatly reduce the phenomenon of administrative interests turning to departments and its privatization, making the exercise of administrative power return to its public nature.

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## 2. ANALYSIS OF OPEN GOVERNMENT INFORMATION UNDER THE PERSPECTIVE OF THE ADMINISTRATIVE SYSTEM

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### 2.1 Decentralized Administrative Bodies

Administrative power configuration determines the settings of administrative bodies. Administrative body setting and administrative power configuration have a high degree of uniformity and consistency. From the settings of administrative bodies in China, the current configuration of power in China is decentralized and the cross-overlap is serious, resulting in decentralization of lateral administrative bodies and serious overlapping functions. At the same time, as the exercise of administrative power is professional and special, the settings of administrative bodies in China present a “fragmented” situation. Administrative institutions are too decentralized. Different information is in the hands of different administrative bodies, but due to the overlapping functions of administrative bodies, this means different administrative bodies need cooperation in the government information disclosure process. On the one hand, administrative bodies are too scattered and they have information communication problems between each other. There are information barriers between government agencies. On the other hand, from the perspective of citizens to apply for government information, in the information disclosure process, the cooperation time the government spends brings inefficiency for information applicants. To some extent, this can be understood as an undue infringement information for citizens’ information application rights. China’s Government Information Disclosure Ordinance Article VII provides that, “the administrative bodies should establish and improve

the coordination of government information release mechanism. When government information released by administrative agencies involves other administrative organs, they shall communicate and confirm with the relevant administrative authorities to ensure the released government information is accurate and consistent.” This coordination release mechanism which does not change the original administrative system is a stopgap measure, and it cannot completely solve the problem. The key is to re-review our current “fragmented” administrative institutional structure and build reasonable administrative institutional bodies to truly promote the efficiency of open government information.

## 2.2 Defects of the Traditional Bureaucratic System

To achieve effective management of the state over the community, a state exists as an abstract entity in nature and the state power works on the community in the way of entitle administrative bodies at different levels in different areas administrative powers. This constitutes the administrative status of institutional mechanisms in China. Meanwhile, in order to achieve reasonable and effective functioning in internal administrative bodies, hierarchical bureaucracy comes into being. According to the opinions of Marx Weber, bureaucracy has the merit of the best technology, reasonable and effective division of labor and impersonal organization and management and so on (Bao, 2006). Through an organized authority and institutional operation system, we can set up an administrative system. Traditional bureaucracy, to some extent, has promoted the efficiency of administrative power. But at the same time due to its high centralization and relative closeness, it is mutually exclusive with the disclosure of government information. As Weber once said, “All bureaucracies are trying to keep internal information and motivation confidential to increase its authority. Bureaucratic administrations always tend to secret management. For now, they try to hide their information and behavior to prevent comment and criticism.”<sup>2</sup> In our case, our bureaucracy is such a typical bureaucracy of this kind of bureaucratic system: Chief responsible system, severe dependency of lower levels to higher levels of officials, clear hierarchy and unreasonable evaluation and accountability mechanisms and so on. This highly centralized and tightly closed administrative bureaucracy constitutes an “organized secrecy”. It is this organized secrecy mechanism that increases the difficulty of open government information, The exclusion of open government information is not loose behavior; however, it has formed a structural disorder in the current organization

<sup>2</sup> Refer to Susan Nevelow, Tom Ginsburg:[Dis-]Informing the people’s Discretion: Judicial Deference Under the National Security Exemption of the Freedom of Information Act, *Administrative Law Review*, fall 2014, Number 4.

of the administrative bureaucracy. However, reflecting the government information disclosure, we can effectively reduce the impact of this hierarchy. We know that in order to achieve the maintenance of this kind of bureaucratic organizations, tendentious information flow is necessary. Reasonably embedding the information controlled and saved by this organization into well-set administrative bureaucracy and consciously controlling the flow of inside information will further strengthen the firmness of bureaucracy. However, by open government information approaches, the government cannot dominate the flow of information. What’s more, if we open other relevant information to the public indifferently, this will gradually narrow the information difference between the relevant agencies so that the whole administrative bureaucracy and the community as a whole present a more flat state, which helps break the current shortcomings of China’s administrative bureaucracy.

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## SUMMARY

The smooth development of open government information should not only focus on the system construction of open government information; at the same time, we should analyze it in the entire administrative system and power structure. Although the current administrative system and administrative power configuration present a variety of issues, yet the proposal of state governance system modernization objectives, the relative concentration of administrative permission and punishment system practices and the development of e-commerce will enable the government information disclosure system of our country to move towards in a more favorable direction.

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