

最高人民法院  
Supreme People's Court

关于审理政府信息公开行政案件若干问题的规定  
**Provisions for Several Issues Concerning Hearings of Administrative  
Cases Related to Government Information Disclosure**

(2010年12月13日最高人民法院审判委员会第1505次会议通过)  
法释〔2011〕17号  
(Adopted at the 1505th Meeting of the Supreme People's Court Trial Committee  
on December 13, 2010\*)  
Judicial Interpretation [2011] 17

中华人民共和国最高人民法院公告  
Announcement of the Supreme People's Court of the People's Republic of China

《最高人民法院关于审理政府信息公开行政案件若干问题的规定》已于2010年12月13日由最高人民法院审判委员会第1505次会议通过，现予公布，自2011年8月13日起施行。

*The Provisions for Several Issues Concerning Hearings of Administrative Cases Related to Government Information Disclosure* has been adopted at the 1505th Meeting of the Supreme People's Court Trial Committee on December 13, 2010,\* and is hereby issued, and will take effect starting from August 13, 2011.\*

二〇一一年七月二十九日  
July 29, 2011\*

为正确审理政府信息公开行政案件，根据《中华人民共和国行政诉讼法》、《中华人民共和国政府信息公开条例》等法律、行政法规的规定，结合行政审判实际，制定本规定。

To correctly try administrative cases related to government information disclosure, these Provisions are hereby formulated in accordance with the *Administrative Procedure Law of the People's Republic of China, Regulation of the People's Republic of China on Open Government Information*, other laws and administrative regulations, and with reference to the practice of administrative trials.

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\* Translator's note: The judicial interpretation was passed on December 13, 2010 but not "released" until July 29, 2011. The full text was published in *People's Court News* on August 13, 2011 and posted to the official SPC website on August 15, 2011.

**第一条** 公民、法人或者其他组织认为下列政府信息公开工作中的具体行政行为侵犯其合法权益，依法提起行政诉讼的，人民法院应当受理：

**Article 1** Where a citizen, legal person or other organization [“applicant”] believes that a specific administrative act taken during government information disclosure work has violated its legal rights and interests, and [where the applicant has] filed an administrative lawsuit in accordance with law, the people’s court shall accept the case [in the following situations]:

（一）向行政机关申请获取政府信息，行政机关拒绝提供或者逾期不予答复的；

(1) [the applicant] has applied to an administrative agency to obtain government information, but the administrative agency has refused to provide the information or has given no reply within the required time period;

（二）认为行政机关提供的政府信息不符合其在申请中要求的内容或者法律、法规规定的适当形式的；

(2) [the applicant] believes that the government information provided by an administrative agency does not conform to the contents required in the application, or in the appropriate form required by applicable law and regulation;

（三）认为行政机关主动公开或者依他人申请公开政府信息侵犯其商业秘密、个人隐私的；

(3) [the applicant] believes that the voluntary disclosure, or disclosure upon application by another applicant, of government information by an administrative agency has violated the applicant’s trade secrets or personal privacy;

（四）认为行政机关提供的与其自身相关的政府信息记录不准确，要求该行政机关予以更正，该行政机关拒绝更正、逾期不予答复或者不予转送有权机关处理的；

(4) [the applicant] believes that government information provided by an administrative agency relating to [the applicant] is inaccurate, and thus has required the administrative agency to correct, but the administrative agency has refused to correct, or has given no reply within the required time period, or has not forwarded the case to a competent authority to handle;

（五）认为行政机关在政府信息公开工作中的其他具体行政行为侵犯其合法权益的。

(5) [the applicant] believes that other specific administrative acts of an administrative agency during government information disclosure has violated the applicant’s legal rights and interests.

公民、法人或者其他组织认为政府信息公开行政行为侵犯其合法权益造成损害的，可以一并或单独提起行政赔偿诉讼。

Where a citizen, legal person or other organization [applicant] believes that an administrative act related to government information disclosure has violated the applicant’s legal rights and interests and thus caused damages to the applicant,

the applicant may jointly or individually bring a lawsuit for administrative compensation.

**第二条** 公民、法人或者其他组织对下列行为不服提起行政诉讼的，人民法院不予受理：

**Article 2** Where a citizen, legal person or other organization [“applicant”] is not satisfied with any of the following acts and thus brings an administrative lawsuit, the people’s court will not accept the case:

（一）因申请内容不明确，行政机关要求申请人作出更改、补充且对申请人权利义务不产生实际影响的告知行为；

(1) an administrative agency requires the applicant to change or supplement its application because of lack of clarity in the [original] application, and where such requirement would not impact the rights and obligations of the applicant;

（二）要求行政机关提供政府公报、报纸、杂志、书籍等公开出版物，行政机关予以拒绝的；

(2) [the applicant] requires an administrative agency to provide a government gazette, newspaper, magazine, book, or other [already] public publication, and the administrative agency refuses to do so;

（三）要求行政机关为其制作、搜集政府信息，或者对若干政府信息进行汇总、分析、加工，行政机关予以拒绝的；

(3) [the applicant] requires an administrative agency to prepare and collect government information or summarize, analyze and process relevant government information for itself, and the administrative agency refuses to do so;

（四）行政程序中的当事人、利害关系人以政府信息公开名义申请查阅案卷材料，行政机关告知其应当按照相关法律、法规的规定办理的。

(4) a concerned or interested party in an administrative proceeding applies to have access to case materials in the name of open government information, and the administrative agency tells the applicant that the agency must act in accordance with applicable laws and regulations.

**第三条** 公民、法人或者其他组织认为行政机关不依法履行主动公开政府信息义务，直接向人民法院提起诉讼的，应当告知其先向行政机关申请获取相关政府信息。对行政机关的答复或者逾期不予答复不服的，可以向人民法院提起诉讼。

**Article 3** Where a citizen, legal person or other organization [applicant] believes that an administrative agency has not performed its obligation to voluntarily disclose government information in accordance with law, and [where the applicant has] directly filed a lawsuit to the people’s court, the people’s court shall tell the applicant to first apply for obtaining relevant government information from the administrative agency. Where the applicant is not satisfied with the reply of the administrative agency or the administrative agency has given no reply within the required time period, the applicant may file a lawsuit to the people’s court.

**第四条** 公民、法人或者其他组织对国务院部门、地方各级人民政府及县级以上地方人民政府部门依申请公开政府信息行政行为不服提起诉讼的，以作出答复的机关为被告；逾期未作出答复的，以受理申请的机关为被告。

**Article 4** Where a citizen, legal person or other organization is not satisfied with an administrative act regarding disclosure, upon request of the applicant, of government information of a department under the State Council, a local people's government at any levels, or a department under the local people's government at or above the county level, and thus brings a lawsuit, the agency making the reply shall be the defendant; if no reply was made within the required time period, the agency accepting the application shall be the defendant.

公民、法人或者其他组织对主动公开政府信息行政行为不服提起诉讼的，以公开该政府信息的机关为被告。

Where a citizen, legal person or other organization is not satisfied with an administrative act regarding voluntarily disclosure of government information, and thus brings a lawsuit, the agency disclosing such government information shall be the defendant.

公民、法人或者其他组织对法律、法规授权的具有管理公共事务职能的组织公开政府信息的行为不服提起诉讼的，以该组织为被告。

Where a citizen, legal person or other organization is not satisfied with the disclosure of government information by an organization authorized by law and regulation to manage public affairs, and thus brings a lawsuit, such organization disclosing the government information shall be the defendant.

有下列情形之一的，应当以在对外发生法律效力的文书上署名的机关为被告：  
Under any of the following circumstances, the agency which signs the document having legal effect on other parties shall be the defendant:

（一）政府信息公开与否的答复依法报经有权机关批准的；

(1) the reply as to whether the government information should be disclosed or not is submitted to a competent authority for approval in accordance with law;

（二）政府信息是否可以公开系由国家保密行政管理部门或者省、自治区、直辖市保密行政管理部门确定的；

(2) the decision of whether government information should be disclosed is made by the State Secrets Administration or subordinate departments at the level of the province, autonomous region or municipality directly under the central government; or

（三）行政机关在公开政府信息前与有关行政机关进行沟通、确认的。

(3) an administrative agency communicates or confirms with [another] relevant administrative agency prior to disclosure of the government information.

**第五条** 被告拒绝向原告提供政府信息的，应当对拒绝的根据以及履行法定告知和说明理由义务的情况举证。

**Article 5** Where the defendant refuses to provide government information to the plaintiff, the defendant shall bear the burden of proof for [showing] the basis for its refusal, fulfilling its legal notification obligations, and providing its reasons and explanations.

因公共利益决定公开涉及商业秘密、个人隐私政府信息的，被告应当对认定公共利益以及不公开可能对公共利益造成重大影响的理由进行举证和说明。

Where the defendant decides to disclose government information involving trade secrets or personal privacy in [the name of the] public interest, the defendant shall bear the burden of proof of explaining the determination of the public interest and the reasons for possible material impact on the public interest if [the information] were not disclosed.

被告拒绝更正与原告相关的政府信息记录的，应当对拒绝的理由进行举证和说明。

Where the defendant refuses to correct government information records related to the plaintiff [i.e., the original applicant], it shall bear the burden of proof for and explain the reasons for such refusal.

被告能够证明政府信息涉及国家秘密，请求在诉讼中不予提交的，人民法院应当准许。

Where the defendant is able to prove that the government information involves state secrets and requests not to submit the information during litigation, the people's court shall approve such a request.

被告主张政府信息不存在，原告能够提供该政府信息系由被告制作或者保存的相关线索的，可以申请人民法院调取证据。

Where the defendant claims that the government information does not exist, but the plaintiff can provide a clue that such government information has been prepared or retained by the defendant, the plaintiff may apply to investigate and submit evidence to the people's court.

被告以政府信息与申请人自身生产、生活、科研等特殊需要无关为由不予提供的，人民法院可以要求原告对特殊需要事由作出说明。

Where the defendant refuses to provide government information on the basis that such government information is irrelevant to the applicant's production, life, scientific research or other special need, the people's court may require the plaintiff [i.e., the applicant] to explain its special needs.

原告起诉被告拒绝更正政府信息记录的，应当提供其向被告提出过更正申请以及政府信息与其自身相关且记录不准确的事实根据。

Where the plaintiff files a lawsuit against the defendant on the basis that the defendant refuses to correct a government information record, the plaintiff shall provide the factual basis that it has applied to the plaintiff for correction, that the government information is relevant to itself, and that the record is inaccurate.

**第六条** 人民法院审理政府信息公开行政案件，应当视情采取适当的审理方式，以避免泄露涉及国家秘密、商业秘密、个人隐私或者法律规定的其他应当保密的政府信息。

**Article 6** When trying an administrative case related to government information disclosure, the people's court shall conduct the hearing in a manner appropriate to the specific situation so as to avoid disclosure of government information involving state secrets, trade secrets, personal privacy, or other information that is to be kept confidential under law.

**第七条** 政府信息由被告的档案机构或者档案工作人员保管的，适用《中华人民共和国政府信息公开条例》的规定。

**Article 7** Where the government information is kept by the archives department or archival staff of the defendant, the provisions of the *Regulation of the People's Republic of China on the Disclosure of Government Information* shall apply.

政府信息已经移交各级国家档案馆的，依照有关档案管理的法律、行政法规和国家有关规定执行。

Where the government information has already been transferred to the national archives at various levels, the laws, administrative regulations and relevant state regulations for archive management shall be followed.

**第八条** 政府信息涉及国家秘密、商业秘密、个人隐私的，人民法院应当认定属于不予公开范围。

**Article 8** Where the government information involves state secrets, trade secrets or personal privacy, the people's court shall decide that such information is not to be disclosed.

政府信息涉及商业秘密、个人隐私，但权利人同意公开，或者不公开可能对公共利益造成重大影响的，不受前款规定的限制。

Where the government information involves trade secrets or personal privacy, but the rights-owner agrees to disclose such information, or the non-disclosure may materially impact the public interest, the restrictions in the preceding paragraph shall not apply.

**第九条** 被告对依法应当公开的政府信息拒绝或者部分拒绝公开的，人民法院应当撤销或者部分撤销被告不予公开决定，并判决被告在一定期限内公开。尚需被告调查、裁量的，判决其在一定期限内重新答复。

**Article 9** Where the defendant refuses to disclose all or part of the government information that must be disclosed in accordance with law, the people's court shall revoke or partially revoke the defendant's decision not to disclose and order the defendant to disclose the information within a certain time period. Where it needs the defendant to investigate or use its discretionary power, the people's court shall order the defendant to provide a new reply within a certain time period.

被告提供的政府信息不符合申请人要求的内容或者法律、法规规定的适当形式的，人民法院应当判决被告按照申请人要求的内容或者法律、法规规定的适当形式提供。

Where the government information provided by the defendant does not conform to that required by the applicant or the appropriate form required by applicable law and regulation, the people's court shall order the defendant to provide such information as per that required by the applicant or the appropriate form required by applicable law and regulation.

人民法院经审理认为被告不予公开的政府信息内容可以作区分处理的，应当判决被告限期公开可以公开的内容。

Where the people's court decides, after the hearing, that the government information the defendant does not disclose may be dealt with in a differentiated manner [i.e., some information can be disclosed, other information cannot], the court shall order the defendant to disclose the part of information which can be disclosed within a certain time period.

被告依法应当更正而不更正与原告相关的政府信息记录的，人民法院应当判决被告在一定期限内更正。尚需被告调查、裁量的，判决其在一定期限内重新答复。被告无权更正的，判决其转送有权更正的行政机关处理。

Where the defendant fails to correct a government information record related to the plaintiff that should be corrected in accordance with law, the people's court shall order the defendant to make such correction within a certain time period.

Where it needs the defendant to investigate or use its discretionary power, the people's court shall order the defendant to provide a new reply within a certain time period. Where the defendant has no right to make the correction, the people's court shall order the defendant to transfer the case to the competent administrative agency for handling.

**第十条** 被告对原告要求公开或者更正政府信息的申请无正当理由逾期不予答复的，人民法院应当判决被告在一定期限内答复。原告一并请求判决被告公开或者更正政府信息且理由成立的，参照第九条的规定处理。

**Article 10** Where the defendant fails to give a reply to the plaintiff's [original] application for disclosing or correcting government information within the prescribed time period without justifiable reasons, the people's court shall order the defendant to give a reply within a certain time period. Where the plaintiff also requests [the court] to order the defendant to disclose or correct government information with justifiable reasons, refer to the provisions of Article 9 for handling.

**第十一条** 被告公开政府信息涉及原告商业秘密、个人隐私且不存在公共利益等法定事由的，人民法院应当判决确认公开政府信息的行为违法，并可以责令被告采取相应的补救措施；造成损害的，根据原告请求依法判决被告承担赔偿责任。政府信息尚未公开的，应当判决行政机关不得公开。

**Article 11** Where the defendant discloses government information involving trade secrets and the personal privacy of the plaintiff without the existence of a statutory reason such as the public interest, the people's court shall decide and confirm that such disclosure of government information is against the law, and may order the defendant to adopt relevant remedial measures. Where damages are caused, the people's court shall, upon the plaintiff's request, decide that the defendant bears liability for compensation according to law. In the event that the government information is not disclosed yet, the people's court shall decide that

the administrative agency shall not disclose the information.

诉讼期间，原告申请停止公开涉及其商业秘密、个人隐私的政府信息，人民法院经审查认为公开该政府信息会造成难以弥补的损失，并且停止公开不损害公共利益的，可以依照《中华人民共和国行政诉讼法》第四十四条的规定，裁定暂时停止公开。

During the course of litigation, where the plaintiff applies to stop disclosing government information involving its trade secrets and personal privacy, and the people's court, upon examination, believes that the disclosure of such government information will cause irreparable damages and that enjoining the disclosure will not impair the public interest, the people's court may decide to temporarily enjoin such disclosure in accordance with Article 44 of the *Administrative Procedure Law of the People's Republic of China*.

**第十二条** 有下列情形之一的，被告已经履行法定告知或者说明理由义务的，人民法院应当判决驳回原告的诉讼请求：

**Article 12** Under any of the following circumstances, if the defendant has performed its obligation of legal notification or explanation, the people's court shall reject the plaintiff's claim:

（一）不属于政府信息、政府信息不存在、依法属于不予公开范围或者依法不属于被告公开的；

(1) the information requested is not government information, or the government information does not exist, or [the information] shall not be disclosed according to law, or shall not be disclosed by the defendant according to law;

（二）申请公开的政府信息已经向公众公开，被告已经告知申请人获取该政府信息的方式和途径的；

(2) the government information applied for disclosure has already been disclosed to the public, and the defendant has told the applicant the ways and means to obtain such government information;

（三）起诉被告逾期不予答复，理由不成立的；

(3) [the original applicant] files a lawsuit against the defendant because of lack of a reply within the prescribed time period, but there are no justifiable reasons for such lawsuit;

（四）以政府信息侵犯其商业秘密、个人隐私为由反对公开，理由不成立的；

(4) [the plaintiff] objects to the disclosure on the basis that the government information has violated its trade secrets and personal privacy, but there are no justifiable reasons for such objection;

（五）要求被告更正与其自身相关的政府信息记录，理由不成立的；

(5) [the applicant] requires the defendant to correct government information record related to itself, but there are no justifiable reasons for such requirement;

(六) 不能合理说明申请获取政府信息系根据自身生产、生活、科研等特殊需要，且被告据此不予提供的；

(6) [the applicant] is unable to reasonably explain that its application for obtaining government information is due to production, life, scientific research, or other special need, and the defendant thus does not provide the information;

(七) 无法按照申请人要求的形式提供政府信息，且被告已通过安排申请人查阅相关资料、提供复制件或者其他适当形式提供的；

(7) [the defendant is] unable to provide government information in the form as required by the applicant, and the defendant has provided the information through such means as arranging the applicant to review the relevant materials or providing copies of the information;

(八) 其他应当判决驳回诉讼请求的情形。

(8) other circumstances under which the claims of the plaintiff shall be rejected.

**第十三条** 最高人民法院以前所作的司法解释及规范性文件，凡与本规定不一致的，按本规定执行。

**Article 13** Where there is any discrepancy between previous judicial interpretations and normative documents issued by the Supreme People's Court and these Provisions, the latter shall prevail.

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More information about Covington & Burling LLP's China-related anti-corruption practice can be found [here](#).

This is an unofficial translation provided for informational purposes only. This information is not intended as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein. Only qualified PRC nationals working in PRC law firms are permitted to practice PRC law. Accordingly, as is true for all non-PRC law firms, we cannot express any legal opinion concerning the interpretation or application of PRC law. If a formal PRC legal opinion is required in relation to any specific issues discussed in this memorandum, our practice is to arrange for such an opinion to be provided by one of our correspondent law firms in the PRC and to work closely with the PRC law firm in that exercise.

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