

Shanghai Municipal Provisions on Open Government Information

(Shanghai Municipal People's Government Decree No. 19,
January 20, 2004)

Chapter I. General Principles

Article 1. (Purposes and Basis)

In order to establish a just and transparent administrative management system, protect the right to know of citizens, legal persons and other organizations, preserve their own lawful rights and interests, and supervise government agencies in the exercise of their powers in accordance with the law, these Provisions are formulated on the basis of the provisions of relevant laws and regulations, together with the actual circumstances of this Municipality.

Article 2. (Definitions)

"**Government information**" referred to in these Provisions means information held by government agencies and related to economic and social management and public services, the content of which is reflected in the "carrier reflection" form of paper, film, tape, software and electronic memory materials.

"**Government agencies**" referred to in these Provisions means each level of the people's government within this Municipality and their work departments and sub-offices, as well as other organizations that exercise administrative powers in accordance with the law.

Article 3. (Principles)

All government information related to economic and social management and public services should be made public or provided upon request, unless subject to one of the exemptions from making public in accordance with the law listed in Article 10 of these Provisions.

In making government information public, the principles of being timely and convenient to the people should be observed to improve work efficiency and provide quality service.

Article 4. (Organizing and Implementing Departments)

This Municipality shall establish an Open Government Information Joint Conference system, composed of the Municipal General Office, the Municipal Informatization Commission, the Municipal Supervision Commission, the Municipal Government Office of Legal Affairs, the Municipal Government News Office and other relevant government agencies, to be responsible for research and coordination of important issues during the process of advancing open government information.

The Municipal Informatization Commission shall be responsible for organizing, guiding and promoting the implementation of these Provisions.

The district (county) informatization commissions shall be responsible for organizing, guiding and promoting these Provisions within their respective administrative areas.

Article 5. (Responsible Departments)

Each government agency should designate a special office to handle open government information affairs for that agency and to be responsible for the daily work of making government information public under these Provisions. The concrete responsibilities shall include:

- (a) Responsibility for matters relating to disseminating government information on the agency's own initiative;
- (b) Receiving and handling requests to that agency to disclose government information;
- (c) Taking care of, maintaining and updating, or supervising and urging the relevant office of that agency to take care of, maintain and update, the government information of that agency;
- (d) Organizing the compilation of that agency's guide to open government information, the government information catalogue and the agency's annual report on open government information work; and
- (e) Other duties stipulated by the provisions of laws, regulations or rules.

Article 6. (Supervision Departments)

The municipal and district (county) supervision departments and government legal affairs departments shall be responsible, in accordance with their respective duties, for organizing the supervision, investigation and evaluation of the implementation of open government information.

Chapter II. Scope of Open Government Information

Article 7. (The Right to Request Disclosure)

Citizens, legal persons and other organizations have the right, based on these Provisions, to request government agencies to provide to them relevant government information.

Article 8. (The Scope of Government Information That Should Be Disseminated)

on the Government's Initiative)

Government agencies should on their own initiative disseminate to society the following government information:

(A) Management of Standardization and Development Plans:

- (1) Municipal government rules, normative documents formulated by government agencies and other documents related to economic and social management and public services;
- (2) Economic and social plans and projects and the situation regarding their progress and completion; and
- (3) Plans such as the comprehensive urban plan, all other types of urban plans and comprehensive land use plans.

(B) Major Matters Closely Related to the Public:

- (1) The forecast, occurrence and handling of epidemic situations, disasters or emergencies that influence the security of life and property;
- (2) The standards, conditions and implementation of poverty assistance, care of families of military personnel and revolutionary martyrs, education, social security, re-employment, etc.; and
- (3) The approval documents, compensation standards and resettlement programs, etc. for land requisition and housing demolition and resettlement.

(C) The Use and Supervision of Public Funds:

- (1) The situation regarding public bidding and implementation of major urban infrastructure projects and the situation regarding the construction progress and completion;
- (2) A catalogue of government centralized procurement projects, the standards for maximum amounts for government procurement, the results of procurement and the supervisory situation; and
- (3) The government financial budget and final accounting and actual expenditures, as well as the audit situation.

(D) Government Agency and Personnel Matters:

- (1) The regulatory functions of the work departments of the governments at each level and the adjustments and changes thereto; and

(2) The recruitment and examination and hiring of civil servants and the conditions, procedures and results of the public appointment of cadres.

(E) Other government information that should be disseminated as stipulated in laws, regulations and rules.

If laws or regulations have other stipulations on the authority to disseminate matters in the preceding clauses, those stipulations shall be implemented.

Article 9. (Making Drafts of Major Decisions Public)

If a government agency is drafting a decision, formulating provisions or drawing up a plan, project or program that involves major interests of citizens, legal persons or other organizations, or has a major social influence, the drafting agency or the decision-making agency should, in the course of formulation, make the draft public to society and the public's opinions should be fully listened to.

Article 10. (Exemptions to the Scope of Open Government Information)

The following government information shall be exempted from disclosure:

- (a) Information is a state secret;
- (b) Information that is a commercial secret or the disclosure of which might result in the divulging of a commercial secret;
- (c) Information that falls within individual privacy or the disclosure of which might result in an improper invasion of an individual's right of privacy;
- (d) Information that is in the course of being investigated, discussed or processed, except when laws, regulations or these Provisions otherwise stipulate;
- (e) Information relating to administrative enforcement, the disclosure of which might influence enforcement activities such as examination, investigation or gathering of evidence or might endanger an individual's life or safety;
- (f) Other information exempted from disclosure by the provisions of laws and regulations.

Government information listed in Clauses (b) and (c) of this Article may be free from the exemption from disclosure under the following circumstances:

1. The rights holder or a relevant party agrees to the disclosure;
2. The public interest in disclosure outweighs the possible harm; or
3. Laws or regulations stipulate that the information may be disclosed.

If disclosing the government information listed in Clauses (d) and (e) of this Article would clearly be in the public interest and would not cause substantial harm, the government

agency may decide to disclose it.

Chapter III. Procedures and Forms for Making Government Information Public

Article 11. (Requests)

Citizens, legal persons and other organizations that request to obtain government information in accordance with Article 7 of these Provisions may use forms such as letters, telegrams, faxes and E-mail to submit a request to the government agency that has the government information.

Requests should include the following contents:

- (a) The names or titles of the citizens, legal persons or other organizations, their proof of identity and methods of contact; and
- (b) A description of the contents of the required government information.

Government agencies may provide the requesters with request forms. The forms may not contain any content that is not directly related to the matters of requests to disclose government information.

Article 12. (Response)

Government agencies should register the requests on the spot after they receive the requests and give written responses in a timely manner based on the following circumstances:

- (a) If it is within the scope of government information that may be disclosed, the requester should be notified of the method and channels through which it may obtain the government information.
- (b) If it is within the scope of an exemption from disclosure, the requester should be informed that it cannot be disclosed.
- (c) If the government information requested is not within the control of the government agency handling the request, the requester should be so informed; if the agency that controls this information can be determined, the requester shall be informed of method to contact that agency.
- (d) If the government information requested to be disclosed does not exist, the requester should be so informed.
- (e) If the content requested to be disclosed is not clear, the requester should be notified to revise or supplement the content of the request.

Article 13. (Disclosure in Part)

If the government information requested to be provided contains content that is exempted from disclosure, but the request can be handled through differentiation, government agencies should provide the content that can be disclosed.

Article 14. (Handling Information that Involves Third Parties)

If the government information requested to be provided falls within the situations of clauses (b) and (c) of the first paragraph of Article 10 of these Provisions and might influence the rights and interests of a third party, unless the third party has already undertaken to agree in writing with the government agency to disclose it, the government agency should seek in writing the third party's opinion. If the third party does not reply within the request period, it shall be deemed to have not agreed to provide the information.

Article 15. (Obtaining One's Own Information and Procedures to Correct It)

When citizens, legal persons and other organizations request government agencies to provide them with government information on such matters as their registration, tax payments and social security that relate to themselves, they should submit a written request with effective proof of identity in person to the government agency. The written request should include a description of the contents of the government information requested, and be signed or sealed. Government agencies should create the conditions, using new technology to confirm identity on-line, to provide convenience to citizens, legal persons and other organizations to submit requests to government agencies over the Internet.

If citizens, legal persons and other organizations discover in the record of the relevant government information anything that is inaccurate, incomplete, out of date or irrelevant, they have the right to request the government agency to correct the information in a timely manner. If the government agency receiving the request does not have the authority to correct the record, it should transfer the matter to the agency with such authority for correction and so notify the requester.

If the state has other stipulations on the search and provision of relevant information related to a citizen, legal person or other organization itself, those stipulations shall be followed.

Article 16. (Prohibited Behavior)

Government agencies that tell requesters that information may not be made public or that the government information may not be provided to them may not then provide such information as a compensated service or as a compensated service in disguise, and may not provide it to citizens, legal persons and other organizations through enterprises, institutions or intermediary organizations that have a recorded or business guidance relationship with such government agencies.

Article 17. (Explanation of Reasons)

If government agencies respond to requesters in accordance with the provisions of clause (b) of Article 12, Article 13, Article 14 and Article 15 of these Provisions, they should

explain the reasons therefore; among these responses, when the response is that the information may not be provided or changed, government agencies should further explain the channels for seeking remedies.

Article 18. (Time Periods)

Except where a response can be given on the spot, government agencies should respond in writing to citizens, legal persons and other organizations within 15 business days of registering the request.

When providing government information to requesters in accordance with these Provisions, government agencies should provide it on the spot after the applicant has gone through proper application procedures. If the information cannot be provided on the spot, it should be provided within 10 business days after the requester has gone through the proper procedures.

If a response cannot be made or information provided within the stipulated time period due to legitimate reasons, and with the approval of the responsible person of the office in charge of open government information, the time period for responding or providing information may be appropriately extended, and the requester shall be notified in writing, but the maximum time of such extension may not exceed 15 business days.

Article 19. (Suspension of Response Period)

If due to *force majeure* or other legally prescribed matters, a government agency cannot respond to or provide the requested government information to the requester within the stipulated time limits, the time limits shall be suspended and the time limit shall resume being calculated after the obstacle is removed.

The government agency shall notify the requester in a timely manner concerning any suspension and resumption of time limits.

Article 20. (Forms of Providing Requested Information)

Government agencies that provide government information upon request may arrange an appropriate time and place and, where the conditions exist, permit requesters to read it on the spot or make a copy themselves. When so requested, the government agency may provide printing and duplicating services to the requester.

If the requester selected in the request mailing, delivery, fax or E-mail as the form in which to obtain a duplicate of the government information, the government agency should provide the information in the requested form. If the requested form cannot be used due to technical reasons, the government agency may select a form that suits the special characteristics of the requested information for providing the information.

Article 21. (Disclosing Information on the Government's Own Initiative)

One or more of the following forms should be adopted to disseminate in a timely manner, and in line with the special characteristics of, the government information that should be disseminated on the government's initiative in accordance with Article 8 of these

Provisions:

- (a) In the government gazette or other newspapers and magazines;
- (b) On the government website on the Internet;
- (c) At government news conferences and through public media such as radio and television;
- (d) Establish in the principal working places of government agencies such places and facilities as public reading rooms, materials request centers, government information bulletin boards and electronic screens; and
- (e) Other forms that facilitate the public in accurately obtaining the information in a timely manner.

Government information that government agencies disseminate on their own initiative should be provided to the public free of charge.

Article 22. (Open Government Information Guides and Catalogues of Government Information)

Each government agency should draw up that agency's guide to open government information.

Each government agency should draw up a catalogue of government information of that agency that is within the scope of what should be disseminated. The government information catalogue should record the title, a simple description of the basic content and the date of production by the government.

Government agencies that meet conditions may gradually draw up a catalogue of government information that has been disclosed through request by those agencies.

Each government agency should update in a timely manner its guide to open government information and the catalogue of the government information that should be disseminated on its own initiative, and make them public for consultation through channels such as the government website.

Article 23. (Making Rules and Normative Documents Public)

Municipal government rules and normative documents should, within 30 days of the date of issue, be made public on the government website on the Internet and, at the same time, in the municipal government gazette. Additional forms of publication may also be adopted.

The normative documents of other government agencies should, within 30 days of the date of issue, be made public on the government website on the Internet and, at the same time, additional forms of publication may also be adopted.

Article 24. (Provision and Consultation of the Municipal Government Gazette)

Municipal government gazettes should be provided in a timely manner and free of charge to such places of distribution as designated book and periodicals stands, book stores and post offices, to facilitate public access.

The municipal government gazette should be placed in an appropriate site in the offices of the district (county) level government, the municipal and district (county) archives halls and public libraries to make it convenient for the public to consult the bulletins free of charge.

Article 25. (Government Press Spokesperson System)

The municipal and district (county) governments shall establish and perfect the government press spokesperson system, to represent their level of government to announce government information to the public.

Each functional department of the municipal government shall, based on the actual requirements, establish its own departmental press spokesperson system.

Article 26. (The Establishment of Public Reading Places)

Government agencies should, based on the requirements of providing government information reading services and where the conditions exist, establish a public reading room or a public reading location, fitted with appropriate facilities to make it convenient for the public to check, read and duplicate relevant government information.

Article 27. (Fees)

When government agencies provide government information to citizens, legal persons and other organizations based on a request, they may charge fees for searching, duplication, postage and delivery based on the costs actually incurred in providing the information. The standards for the fees shall be formulated on a unified basis by the municipal departments in charge of finance and pricing. All the fees collected by government agencies shall be submitted to the finance department.

If the requester is a low income person based on this Municipality's relevant provisions, upon request by the person and with the verification and approval of the responsible person in the office of open government information of the government agency, the fees may be exempted.

If laws or regulations have other stipulations regarding fees, those stipulations shall be implemented.

Article 28. (Guidance)

Each government agency should make public to society the name, office address, office hours, contact phone numbers, fax numbers and E-mail addresses of its office that is responsible for open government information affairs, and facilitate the provision of advice to citizens, legal persons and other organizations on open government information matters.

Article 29. (Assistance)

When requesters have difficulty reading due to disabilities or illiteracy, government agencies should provide them with necessary assistance.

Chapter IV. Supervision and Remedies

Article 30. (Annual Report)

The Municipal Informatization Commission should, before March 31 of each year, publicize an annual report on open government information of this Municipality. The annual report should include the following contents:

- (a) The situation concerning dissemination of government information by government agencies on their own initiative;
- (b) Statistics on the disclosure of government information requested by citizens, legal persons and other organizations;
- (c) Statistical break-down of information the government agencies agreed to disclose or disclosed in part, or that was exempted from disclosure;
- (d) Statistics on requests for administrative review, lawsuits and complaints relating to the making public of government information and the results of their handling;
- (e) Major outstanding problems and plans for improvement; and
- (f) Other important matters that should be reported.

Article 31. (Legal Liability)

When these Provisions are violated by government agencies in one of the following ways, the Municipal Informatization Commission shall order them to correct their ways and, when the circumstances are serious, the supervisory departments or the administrative agency in charge shall mete out, according to the law, administrative punishment to the persons directly in charge and other persons who are responsible:

- (a) Failure to implement the obligation to make certain government information public on their own initiative or update in a timely manner the contents of the information that is made public on their own initiative;
- (b) Failure to provide or update in a timely manner the agency's guide and government information catalogue;
- (c) Concealing or refusing to provide to legally qualified requesters government information that should be made public;

- (d) Failure to fulfill the obligation of notifying third parties, thereby causing injury to the legitimate interests of those parties;
- (e) Not correcting in accordance with law the information about a requester itself; and
- (f) Illegally collecting fees.

Article 32. (Channels for Remedy)

Citizens, legal persons and other organizations that believe that government agencies have failed to fulfill their obligations to disseminate government information on their own initiative in accordance with the law may file a complaint with the supervision agency or the next higher level government agency. Agencies that receive complaints should investigate and handle them.

Citizens, legal persons and other organizations that believe that the concrete administrative behavior of government agencies has violated these Provisions, and infringed their lawful rights and interests, may request administrative reconsideration in accordance with the law. If they do not agree with the decision made as a result of administrative reconsideration, they may pursue administrative litigation in accordance with the law. Citizens, legal persons and other organizations may also file an administrative lawsuit directly in the people's court in accordance with the law.

Article 33. (Compensation)

If a violation of these Provisions by the concrete administrative behavior of a government agency causes economic losses to a requester or a third party, that requester or third party may request compensation in accordance with the law.

Chapter V. Supplementary Provisions

Article 34. (Expenses Safeguard)

Government agencies should include the expenses for open government information in their annual budgets, to safeguard the normal operation of activities to make government information public.

Article 35. (Handling of Failure to Make Normative Documents Public)

If normative documents of a government agency that are in effect and should be made public based on these Provisions had not been made public in accordance with the law before the effective date of these Provisions, they should be made public within six months from the effective date of these Provisions through the government website on the Internet and may, at the same time, be made public through other appropriate forms.

Article 36. (Deadlines for Drawing up and Making Public Guides and Catalogues)

Within six months from the effective date of these Provisions, each government

agency should, based on Article 22 of these Provisions, draw up and make public the guide to that government agency's open government information, and a catalogue of the government information that it should disseminate on its own.

Article 37. (Implementing Rules)

Each government agency may formulate, based on these Provisions, detailed implementing rules applicable within its own system or own agency

Article 38. (Effective Date)

These Provisions shall go into effect on May 1, 2004.