

Study on the Administrative Accountability System: From the Perspective of the Government Information Publicity

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Abstract

The regulation of government information publicity has been implemented for more than seven years, the effect is not good. The administrative accountability system has failed to play its proper oversight role. Currently, this system has the difficulties of ineffective work of government information publicity, the poor effect of the external accountability and limited cases caused by the government information publicity in administrative accountability. Basic principles should include matching powers with responsibilities, making liability commensurate with mistakes, and sticking to objectivity and justice. At the same time, enhancing the legal awareness of both officials and the public, improving relevant legal system, strengthening administrative ethics construction and pay attention to the role of the external accountability subject will also contribute to the healthy operation of this system.

Key words: Government information; Information publicity; Administrative accountability

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INTRODUCTION

In recent years, under the advocating and continuing support of the central government, the government

information disclosure work has got great development in our country. Although the work has made great achievements, it is undeniable that there are still some problems to be solved. The occurrence of the above problems is closely associated with the absence of the administrative accountability system. More and more people of insight understand that the government information disclosure and administrative accountability are closely related, and neither is dispensable.

1. RESEARCH ON THE LOGIC RELATIONSHIP BETWEEN GOVERNMENT INFORMATION PUBLICITY AND ADMINISTRATIVE ACCOUNTABILITY

1.1 Government Information Publicity Is the Foundation and Prerequisite for the Establishment and Improvement of the Administrative Accountability System

If the government information is not effectively open, it will cause a huge obstacle to the operation of the administrative accountability system. Government information is not disclosed in accordance with the law will directly harm the public's right to know. It will be very difficult for the public to legally exercise the right of supervision, unless they are able to obtain relevant information in a timely manner. In fact, it is precisely because the public is difficult to obtain relevant information, resulting in their often unable to participate effectively in the process of the administrative accountability. If the government information is not disclosed in accordance with the law, it will lead to a good operation of the administrative accountability system becomes very difficult, and ultimately will affect the effectiveness of administrative accountability.

1.2 The Benign Operation of the Administrative Accountability System Has the Function of Ensuring the Government Information Publicity

The administrative accountability system can not fully play its role is the important reason which causes government information disclosure work carried out ineffective. The smooth progress of the work of government information publicity will be easier, if the government departments and their staff did not fully disclose the government information according to law, will be held strictly responsible for the acts and omission. However, if the government information publicity is not open according to law, the men who were responsible for ensuring that government information should be published in a timely manner did not receive any accountability. Then it is not difficult to understand that the problem of insufficient power of government information publicity. Similar to “no relief, no right”, “no accountability, no public” is likely to become a persistent ailment of the government information publicity work.

2. CURRENT SITUATION, DILEMMA AND REASON ANALYSIS

2.1 Current Situation Analysis

At present, the research on the theoretical basis of the administrative accountability system from the perspective of the government information publicity is not much. There are some problems in the theoretical basis of the administrative accountability system from the perspective of government information publicity. One of the main problems is that it failed to mobilize the enthusiasm of different subjects to promote the administrative accountability. For example, when the country was developed and the further reformed, some of the provinces and cities formulated and have appeared the corresponding administrative accountability rules. In the design of these rules, it is often overlooked that, the subject outside the administrative system is difficult to obtain the information which is necessary for the administrative accountability. At the same time, these subjects even get the relevant clues or information often do not have the ability and the independent accountability information release channels. This also causes the difficulty of effectively exert the subject outside the administrative system to start or to assist in the operation of the administrative accountability system. In addition, the *Regulation of the People's Republic of China on the Disclosure of Government Information* was formally implemented on May 1, 2008. Pursuant to article 35 of the ordinance, the subject of accountability, accountability object, the reason of accountability and the procedure of accountability has a general provisions. Since then, some local governments have enacted and implement the relevant regulations and administrative regulatory documents.

The author use “the government responsibility for information disclosure” as the search key. In addition, use the Magic Weapon of Peking University as information retrieval tool. It is found that the current number of normative documents whose name contains “the government responsibility for information disclosure” is 23. Uses the same method, “the government information disclosure administrative accountability” as the search key, the search result is 0. At present, we can see that in our country, there is no one legislative document in the name of “the administrative accountability of government information disclosure”. In the executive and legislative practice, the relative subject more inclined to use “the government information disclosure accountability” instead of “the administrative accountability of government information disclosure”.

2.2 Dilemma Analysis

2.2.1 Ineffective Work of Government Information Publicity

The work of government information publicity in China has made great progress, especially since the promulgation and implementation of *Regulation of the People's Republic of China on the Disclosure of Government Information*, the government information publicity system has laws to go, a large number of government information became public. The government information has transformed from the underground to take the initiative to open. But according to the contents of the Annual Transparency Report of the Government of China' (2013), at the present stage, there are still two problems in our government information disclosure work. One is in the aspect of the voluntary government information disclosure, the work is far from the requirements of the *Regulation of the People's Republic of China on the Disclosure of Government Information*. The growing basic access to information needs of the general public has not yet been met. Second of all, in the aspect of the public in accordance with the application, the behavior of the local governments and departments is not standardized. The procedures and standards of according to government information disclosure in different regions are not unified. We can conclude from above two aspects, at this stage, although the government vigorously promote and support the work of government information disclosure, some government departments and their staff responsibility consciousness, dereliction of duty. Departure from the principle of fair and open, all the relevant information should be fully accurate and timely disclosure. However, leading members who are directly in charge and other persons who are directly responsible for the disclosure of information often not updated information timely. Even some of the staff' work basically are doing things carelessly. In the face of the government information disclosure application of the citizen, corporation, or other organization, some of the administrative organs and

their staff refused to disclose the relevant information comprehensively and accurately according to relevant regulations.

2.2.2 The Poor Effect of the External Accountability

According to the 2012 *Law Blue Book* released by the Chinese Academy of Social Sciences (CASS), the cognition of the government information publicity system of the general public is not strong. Only 58.4% of respondents said they knew *Regulation of the People's Republic of China on the Disclosure of Government Information*. Only 12% of respondents said they knew they have the right to apply for government agencies to provide the required information and have applied for government information disclosure (Li, 2012). As can be seen, the public who is one of the most important external accountability subject are not fully aware of their rights, in the process of construction of the administrative accountability system from the perspective of the government information publicity has not played its due role.

2.2.3 Limited Cases Caused by the Government Information Publicity in Administrative Accountability

Since the promulgation and implementation of *Regulation of the People's Republic of China on the Disclosure of Government Information*, within the country has not yet found any administrative organs and their staff be held accountable for violating the regulation. According to the briefing, Shenzhen City by using the electronic monitoring system to supervise administrative examination and approval, administrative enforcement of law, government information disclosure and other administrative actions. Since the year 2010, 114 cases filed with the local supervision departments (Zhou & Gan, 2014). But have not heard of any specific officials be held accountable for their poor performance in the government information disclosure work. This is an important manifestation of the plight of the administrative accountability system from the perspective of the government information publicity. The right to life is not the promulgation but of relief. The life of law lies in implementing, and the effects of law implementation are closely related to whether the responsibility system is sound or not. If the administrative accountability system has not been actually started, it will inevitably lead to some government departments and their staff refused to open the government information according to law.

2.3 Reason Analysis

2.3.1 Officials and the Public' Poor Awareness of Government Information Publicity

In our country the administrative accountability system from the perspective of the government information publicity has been developed for a short time. The old thinking on the idea level is often very difficult to change in a short period of time. Officials do not want to open government information, in addition to the

traditional barriers such as the culture of secrecy, they also consider their own reality interests. In order not to be accountability, some government departments and their staff choose not to open government information as far as possible. In their view, the government information as a resource can be used to rent-seeking, and can maximize avoid the adverse consequences of accountability caused by the leakage of information. Compared with officials' poor awareness of government information publicity, ordinary people' right and law consciousness are improved to a certain extent, but there are still many people who are not willing to take the initiative to exercise the right to apply for government information disclosure. Information open is necessity of administrating legally and effectively. However, government departments and their staff refused to reveal the government information to the public for various reasons. This makes achieve optimal allocation of the information resources will become more difficult among different social subjects. At the same time, it is extremely likely to lead to the abuse of administrative power and corruption. In the end, it not only harm the interests of the masses, but also causes the decrease of the transparency of our government and the loss of the credibility of the government.

2.3.2 Defects of the Regulation of Government Information Publicity

The problems of the *Regulation of the People's Republic of China on the Disclosure of Government Information* (hereinafter referred to as *the regulations*) are the following. First of all, the effectiveness of *the Regulations* is low, not has enough authority. When *the Regulations* and Secrecy Law, Archives Law and other laws are in conflict, it is difficult to apply the principle of "the law is superior to the old law", because of *the Regulations*' legal effect is lower than law. Only the principle of "the law is superior to the lower level law" can be application. In addition, the rule that higher norms are superior to lower ones belongs to priority of validity, and there is no exception. Secondly, some provisions of *the Regulations* are too broad and general, so it is not conducive to practice the application of. Concepts such as "three safe stable", "public interest" and so on are lack of scientific and reasonable standards. As a result, in practice, often leads to the government departments and their staff abuse of authority, refused to open the government information for a variety of reasons. Thirdly, *the Regulations* did not explicitly apply "publicly take as a principle, take not public as the exception" to the law. In practice, government departments and their staff always adopt the principle of "not public take as a principle, take publicly as the exception", make the publicity of government information, range severely curtailed.

2.3.3 Difficulties to Combine the Internal Accountability With the External Accountability

China's administrative accountability system from the perspective of the government information publicity

is dominated by the official. The establishment of administrative accountability system in our country soon, and accountability is still in the internal accountability stage. The internal accountability subjects mainly include superior administrative organization, the supervision department, the audit department and so on. Both the internal accountability subjects and the object of accountability belong to the internal administrative system. The lower executive authorities should obey higher administrative organs. In order to avoid being held accountable, before making administrative decisions about whether or not to public the government information, the lower executive authorities sometimes ask her higher administrative organs for help. This leads to the higher administrative organs often do not exercise the supervision and management rights according to law. The embarrassment of the internal accountability, mainly because of did not introduce strictly procedural norms into the process of accountability, the independence and professionalism of the internal accountability has not been effectively protected. According to different subjects of accountability, the accountability system can be divided into the internal accountability subjects and the external accountability subjects. The external accountability subjects mainly include the state power institution, citizens, corporations and other organizations and so on. Compared with the internal accountability, the external accountability will comply with the requirements of the development of democracy, with greater effectiveness and credibility. However, the external accountability subjects' right to obtain the relevant accountability information is not fully respected and protected. The supervisory role of the legislative body, the judicial authority, the news media and the general public are difficult to play the effectiveness.

3. COUNTERMEASURES RESEARCH

3.1 Enhance the Legal Awareness of Both Officials and the Public

Karl Popper pointed out:

If the country is going to perform its functions, at any rate, it must have greater strength than any other individual national or public groups; although, in order to reduced the danger of the abuse of power to a minimum, we can design various kinds of system, we can never eradicate this dangerous phenomenon. (Pope et al., 1986)

Since the danger of the abuse of power can not be eradicated, we had to settle for second best, design scientific and feasible system to maximize regulate power and reduce harm. There are three basic approaches to prevent the abuse of power: restrain power from power, restrain power by right, restrain power by morals. Among the three different ways of controlling state power, in particular, we should pay attention to restrain power

by right, because it is an inexorable trend of historical development of constitutional government. The full play of the role of the news media, citizens, legal persons and other organizations is an effective method to supervise the administrative power. On the one hand, in order to achieve the goal of supervise the administrative power, China must further strengthen civic education to enhance the civic awareness of legality. The first paragraph of article 41 of the *Constitution of the People's Republic of China (2004 Amendment)* states that citizens of the People's Republic of China have the right to criticize and make suggestions regarding any state organ or functionary. Citizens have the right to make to relevant state organs complaints or charges against, or exposures of, any state organ or functionary for violation of the law or dereliction of duty; but fabrication or distortion of facts for purposes of libel or false incrimination is prohibited. In addition, the article 33 of the *Regulation of the People's Republic of China on the Disclosure of Government Information* states that where any citizen, legal person or any other organization believes that an administrative organ fails to fulfill its obligation of government information disclosure according to law, he/it may inform the superior administrative organ, supervisory organ or the competent department of government information disclosure. The informed organ shall investigate and handle it according to law. Where any citizen, legal person or any other organization believes that a specific administrative act committed by an administrative organ in carrying out government information disclosure work has infringed upon his/its legal rights and interests, he/it may apply for administrative reconsideration or bring an administrative lawsuit according to law. On the other hand, ensure that everyone abides by the law is not just the ordinary people should abide by the law, officials should set an example in observing discipline and abiding by the law. In order to effectively enhance the public servants' awareness of law, the government should strengthen propaganda and education, improve the organizational training mechanisms and establish suitable performance appraisal system. It helps to promote the administrative organs to exercise the administrative power correctly, disclose the government information voluntarily.

3.2 Improve Relevant Legal System

China should perfect the legal norms, because it has a very important practical significance for the healthy development of the administrative accountability system. Nowadays, the developed countries in general have established relatively complete legal system for administrative accountability. In the case of United States, the *Administrative Procedure Act* and the *Freedom of Information Act* have played an important role. In "Government Accountability and Its Limits", the author Robert-S·Barker pointed out that in addition to historical traditions, practices and other forms, some articles

concerning government accountability also included in the constitution of the United States. Beyond that, there are many federal and state laws, local regulations directly determines government accountability (Barker, 2000). The *Freedom of Information Act (FOIA)* and the *Federal Government in the Sunshine Act (1976)* are two most important laws in the field of United States government information. Besides, the *Federal Advisory Committee Act (1972)* also has a close relationship with the two pieces of legislation (Wang, 1995). It should be pointed out that a complete legal system does not only mean that the United States has developed a series of legal norms, but also means that these legal norms have useful pertinence and maneuverability. In order to set up a perfect legal system, we should not only pay attention to improve the related substantive law, but also improve the procedural law. In order to integrate law enforcement resources, improve the effectiveness of administrative law enforcement, the authorities should set up specialized agencies to strengthen supervision of administrative accountability work.

3.3 Pay Attention to the Role of External Accountability Subject

To make sure that the administrative accountability system operates well, we must fully develop the role of various types of subject of supervision. In order to achieve seamless connection between internal accountability and the external accountability, we must try to avoid the negligent supervision of the internal accountability subject, at the same time to avoid the external accountability subject cannot intervene the whole process. Guy-Peters said: "The biggest advantage and characteristics of participatory democracy is that it emphasizes the citizens to participate in all stages of the policy process, not just complaints or provide the feedback information about policy execution mode after the policy implementation." (Peters, 2001) Compared with the internal accountability subjects and the other external accountability subjects, public participation has more advantages, because of its great openness, lower cost and wider coverage. From the information disclosure relief system of the United States, we can see that the organ of authority, judicial authority, civil society groups and ordinary people all have the right to call the government departments and their staff who are in violation of information disclosure law to account. The accountability way of the organ of authority is mainly refers to the impeachment and considers the implementation report of the *Freedom of Information Act*. Although considering the impeachment process is relatively complex and strict, rarely be used by Congress, but this system as an important means of restricting the executive power of the government, still has a powerful deterrent effect. In addition, the Congress can consider the implementation annual report of the *Freedom of Information Act*, this

report submitted by administrative organ and attorney general of the United States, and those files that do not open government information in accordance with law will be denied by the Congress. Judicial accountability is one form of accountability, which mainly refers to the ordinary courts through the use of judicial review system to supervise and control the administrative power. It has been widely accepted that discretion powder should be effectively controlled and judicial review system has been adopted to supervise it. Using this system, the court has realized the regulation of the administrative power on the basis of the respect to executive power. Thus, the diversification of administrative accountability subjects can enhance the intensity of supervision, expand the scope of supervision, and avoid the single accountability subject may raise some problems. For example, administrative accountability is not timely, not quite in place, and even turns a blind eye and deaf ear to illegal activities.

3.4 Strengthen the Legal Construction of Administrative Ethics

The effective operation of the administrative accountability system from the perspective of the government information publicity, also cannot do without the corresponding ethic ensuring systems. In the aspect of the legal construction of administrative ethics, the Japan is one of the most worthy to be studied among the law developed countries. In 1985, Japan' Political Ethics Program of the House of Representatives emphasizes that

we should be trusted by the national, and we have the obligation to thoroughly implement the noble concept of ethics, we must resolutely put an end to the confused situation between the public and the private sphere, keep clean, in any case, not condemnation by national, we must resolutely put an end to political corruption, make efforts to improve the political ethics.

In addition, the Japanese government has promulgated the Law of Ethic of Japanese Civil Servants and the Rules of Ethic of Japanese Civil Servants, those two documents is a new measure taken by the Japanese government, to supervise the civil service is diligent and honest in their work, to prevent civil servants dereliction of duty or corruption. Official property declaration system as an effective preventing and punishing corruption supervision system, has been set up in many countries and regions of the world. Japan's special duty civil servants property declaration system plays an important role in promoting the government information disclosure, regulating the Japanese civil servants to comply with ethics norms, and preventing corruption. As a developing country, China can learn a lot from other countries. For example, we can draw lessons from the United States, Japan and other foreign advanced experience of developed countries. Our country should set up the civil servant ethics commission and other specialized regulatory agencies. It should be start the administrative accountability working

mechanism according to law, to punish the civil servants whose behaviors have violated the morality and ethics. Considering that our country has not set up the Law of Ethic of Civil Servants, the legislative departments can try to strengthen the Legal Construction of Administrative Ethics on the basis of national conditions of China.

CONCLUSION

We need to intensify the work of government information disclosure, to promote the free flow of information in the context of the whole society. Optimal allocation of information resources helps to strengthen the communication between the official and the folk. If the government wants to achieve scientific governance, democratic governance and ruling according to law, it should first speak frankly and sincerely. As sunshine is the best antiseptic, transparency represents the best supervision of power. The construction of the system needs the accumulation of time, it is often difficult to accomplish the task at one stroke. We should realize soberly, due to the concept, system and other reasons, the government information disclosure work will be a long-term gradual process, so to do well the long-term development preparation. At present, our country

is vigorously promoting the process of law-building, I believe that with the development of the social economy and the improvement of the consciousness of law, the range and scope of information disclosure will be gradually to expand, and the effectiveness of the administrative accountability system will become increasingly prominent.

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