

Research on the Protection of Administrative Law of Personal Information under the Background of Big Data

Tang Jun, Lei Ying

Jiangxi Normal University Science and Technology College, Nanchang, 330027, China

Keywords: Personal information, Big data, Information leakage, Administrative law

Abstract: The development of high technology has made us enter the era of big data. Personal information is not only a carrier of personal privacy, but also has obvious property and resource attributes. Due to historical reasons, China's protection of personal information is significantly lower than that of developed countries in Europe and the United States. Until now, no special personal information protection law has been enacted, resulting in frequent leakage of personal information, which has brought great threats, therefore, the protection of administrative law is particularly necessary. From the perspective of administrative law, combined with the current use of big data, improving the legal regulation of personal information has two practical significances: it can not only protect personal information, but also promote the construction of China's personal information protection law system. In this regard, this paper puts forward the problems of personal information protection in China from the perspective of administrative law and gives corresponding suggestions to help protect personal information data by administrative law, protect citizens' rights, and maintain network and data security.

1. Introduction

At present, big data has become a popular vocabulary in this era. The US government refers to big data as the oil that promotes social development. In 2015, it first proposed the national big data strategic concept and released a series of policy documents, such as the "Action Plan for Promoting Big Data Development" and "Big Data Industry Development Plan", which effectively promoted the development of the big data industry. Since big data has been related to various rights of people, including the basic constitutional right of privacy and personal information, and the information collection of big data is related to the characteristics of individual information, such as individuality, specificity, universality and confidentiality, big data is combined with personal information.

Citizens of our country have a relatively weak sense of self-protection of personal data. They do not understand the threat to personal data security caused by the network environment, and are unaware of the serious consequences that may be caused by the improper use of personal data by others. The purpose of this article is to encourage people to pay more attention to the security of personal information and take the initiative to protect their data.

2. Definition of Personal Information in the Context of Big Data

In 1968, the concept of "personal information" was first proposed at the United Nations. After years of development, the terms "personal data" and "personal privacy" have been derived and adopted by various countries' legislation. In China, whether it is a legal concept or legal provisions, the concept of "personal information" is basically adopted, as is the "Personal Information Protection Law" formed in 2005.

Regarding the definition of personal information, there are many definitions in the domestic academic community. Some scholars believe that personal information refers to the sum of all identifiable personal information; some scholars believe that personal information refers to all personal information, including not only physical characteristics and identity information also include lifestyle, economy, and property status; some scholars believe that personal information refers to information that can directly or indirectly identify the identity of a particular

natural person. Personal information is highly identifiable and covers a wide range of content. Information is data in nature, so personal information and personal data are consistent in extension, and both refer to a series of special symbols that can identify individuals, including identity information. Personal information based on the big data contains not only includes information that is closely connected to individuals and can identify specific personal identities, work, family, property, health, etc., but also includes personal information resources obtained through the application of big data technology, such as by shopping websites. Although the search record left on the page cannot be directly identified to the individual, but the network service provider can obtain the individual preference of the shopper through the big data analysis of the content and number of search records and use it. It has certain identification and belongs to the category of personal information.

3. Analysis of the Protection of Personal Information Administrative Law in China under the Background of Big Data

3.1 Administrative Law is Insufficient to Protect Personal Information Directly

At present, the protection of personal information in China's administrative law is reflected in many forms, but most of them are indirect protection. It is reflected in the legal provisions, most of which are protected by indirect methods such as “personal dignity”, “personal privacy”, “portrait rights”, “name rights” and other forms of personality rights and personality interests, and can provide only very limited and delayed relief compensation. The “Personal Information Protection Law” (Expert Recommendation Draft) has issued three drafts since 2003, but no significant progress has been made in legislative work. What is personal information, the coverage of personal information, which personal information should be protected under what circumstances, what rules should be followed to collect, store and use personal information and how to reasonably and effectively carry out post-relief compensation after infringement of related rights and interests And other fundamental issues, lacking clear regulations. At present, the protection of personal information in China is usually indirectly protected in the litigation process attached to other rights, which is basically in the form of personal privacy. However, in fact, the connotation and extension of personal information and personal privacy are very different. The scope of personal information is much larger than that of personal privacy. Personal privacy is only a special aspect of strong private personal information. As a substitute for the protection of personal information in accordance with the relevant provisions on privacy and reputation rights, it lacks pertinence and accuracy. In practice, the court usually adopts judicial interpretations or magnified interpretations of relevant laws and regulations to solve and deal with such problems. The effect is very poor. Compared with the personal information crisis caused by the current big data wave, the problem cannot be solved effectively.

3.2 Lack of Administrative Supervision of Personal Information Protection

In real life, people have limited ways to protect their personal information, and they often use self-restraint to protect their personal information. In order to ensure that the personal information protection effect is obvious, we must rely on the administrative supervision and restraint. A lot of practice shows that in many cases of leakage of personal information of citizens, most of the people involved are public officials of the administrative organs. They sold the rights of citizens for their own benefit. Therefore, in order to restrict their abuse of power, administrative supervision must be strengthened. The main function of administrative supervision is supervision, which prevents administrative subjects from infringing acts when exercising their powers and responsibilities.

Administrative supervision is a way of supervision and management. It is carried out through legal organizations and individuals, and the executive body is the national administrative agency. There are two types of objects to be supervised: public offices and corresponding personnel who process personal information; enterprises and institutions and corresponding personnel.

For the first category of subjects, the corresponding supervision should be classified as internal

supervision. This type of supervision is relatively more direct and the effect will be more significant.

3.3 Lack of Supervision and Relief System

With the development of technology, the ways and methods of collecting personal information are diversified. However, there is no clear regulation or system to manage the purpose, methods and information collected. Only when there is a problem, supervision and management will be carried out for specific problems. Such lagging management will cause many loopholes. Citizens' personal information is always in a high-risk state, which can easily lead to large-scale leakage or infringement. After personal information is leaked or infringed, citizens not only suffer from property rights but also pressure on personality and spirit. In the civil law, the scope of personal information is not clearly defined, and the results of trials are not uniform. Many articles only stipulate the prohibitive criteria and confidentiality obligations for personal information, and lack physical relief. The criminal law limits the violation of personal information to the sale, supply and acquisition, but in fact the violation of personal information is not limited to these. There are no relevant provisions on how to punish other infringements, which makes it difficult to obtain effective relief after citizens' personal information rights are violated. After personal information is infringed, it is difficult to get effective relief in civil law and criminal law. It is caused by the lack of prior supervision of the protection of personal information and the absence of subsequent relief in the current administrative law.

4. Perfecting the Protection System of Personal Information Administrative Law in China under the Background of Big Data

4.1 Promote Special Legislation on Personal Information Protection

At present, the main users of personal information in our country are administrative agencies, so we need to focus on regulating the behavior of administrative agencies in using personal information. From an extraterritorial point of view, the main regulation of foreign personal information protection laws is the relationship between administrative agencies and counterparts. Since China has not yet promulgated a special "Personal Information Protection Law", administrative agencies have no corresponding regulations when using personal information. Therefore, special administrative legislation should be carried out as soon as possible to make up for the lack of norms.

First, we must establish the basic principles that administrative agencies should follow when using personal information. From the perspectives of administration according to law and government governed by law, the basic principles that administrative agencies should follow when carrying out general administrative actions are also applicable to the process of collecting and using citizens' personal information. In addition, based on the particularity of personal information, administrative organs should also adhere to the principles of proper collection and confidentiality, limited to the realization of administrative purposes, and cannot be collected excessively. Secondly, the special administrative legislation should stipulate that when collecting and using citizens' personal information, the administrative organs must take due process to ensure the parties' participation and listen carefully to their statements and defenses. For personal information matters involving the parties' major rights and interests, applicants have the right to apply for hearing to ensure maximum standardization of the use of personal information. Finally, in the administrative legislation, the rights and obligations of the information collector and the collected must be determined, the authority of the information collector must be stipulated, and the rights and responsibilities of the information collector must be fulfilled, so that the collected can have the basis of the right of claim when seeking relief.

4.2 Establish a Special Personal Information Supervision and Management Agency

At present, China does not have a comprehensive, specialized and independent personal

information supervision and management agency. Therefore, the supervision of personal information falls on different administrative agencies. Administrative actions such as registration and licensing require relevant departments and staff to take measures to protect personal information. For example, public security organs keep confidentiality of citizenship information, and civil affairs organs protect marriage registration information. However, this non-uniform and decentralized supervision and management model has many drawbacks, causing confusion in the administration. At present, data security issues need to be resolved urgently, and it is necessary to establish a special personal information supervision and management organization. Personal information regulatory agencies are established from top to bottom, from the central government to local governments. It is necessary to ensure that personal information regulatory agencies can exercise their powers independently and fairly. The main responsibility of the personal information regulatory agency is to regulate the government information management department and set rights and obligations for it. The information supervisory authority has the right to formulate normative documents, provide information and implement policies, and at the same time entrusts it with corresponding notification and personal information security protection obligations.

4.3 Multiple Ways to Improve the Administrative Relief System of Personal Information

No relief and no rights, a complete relief system is the basis for protecting rights. First, establish the burden of proof rules in such cases. After the personal information of citizens is violated by the administrative agency, due to the obvious unequal status between the administrative agency and the counterpart, and the citizen's weak position in the collection and preservation of personal information, the citizens are required to bear the burden of proof is extremely difficult. Therefore, optimize the burden of proof, let the infringer prove that he did not infringe on the personal information of citizens, and prove that he has fully fulfilled his obligation of confidentiality by presenting the opposite evidence, which can not only reduce the burden of proof for the relative, but also help save judicial costs and help for substantive resolution of disputes. Second, improve the administrative compensation system after personal information is infringed. A perfect national compensation system is conducive to protecting the legitimate rights and interests of citizens, and prompts administrative agencies to administer according to law. Through administrative compensation, increase the illegal cost of administrative agencies after infringement, so as to curb the violation of citizens' personal information by administrative agencies. Regarding the amount of compensation, this article believes that it is possible to clarify the impact of personal information infringement according to the degree of personal information infringement, and to determine the amount of compensation in combination with the negative effects on the relative. Finally, in cases where legislation cannot be followed up in a timely manner, legal interpretations can be issued by subjects with authority, the legal basis for the protection of personal information can be improved, the responsibilities of administrative organs can be clarified, and mutual refutation between different agencies can be prevented.

5. Conclusion

As technology continues to develop, there will be more and more technical ways to obtain personal information, and personal information protection will become more difficult. The protection of personal information will be adjusted according to different social development. Although China has successively formulated some legal systems, the protection of personal information is still in a relatively backward state. There are many obvious deficiencies and defects, which have caused frequent personal information security incidents in recent years, which has caused great personal loss. Therefore, the personal information law must be formulated and improved. It is hoped that the work in this article can have a certain reference significance for the protection of personal information by administrative law.

References

- [1] Zhong, W., *Personal Data Privacy Regulations in the Era of Big Data*. Beijing: Social Sciences Literature Press, 2014.
- [2] Zhang, C.Q., Qi, A. M., Li, Y., *Research on the Legal System of Personal Information Development and Utilization in the Big Data Era*. Beijing: Law Publisher, 2015.
- [3] Sun, J. Z., *Japanese Data Privacy Law: Overview, Content and Enlightenment*, *Modern Intelligence*, 2016, vol.36, no.6, pp.140-143.
- [4] Sun, C.X., Qin, H., *Research on Legal Issues of Personal Information Protection*, *Journal of Beijing University of Posts and Telecommunications (Social Science Edition)*, 2010, vol.12, no.1, pp.16-23.
- [5] Qi, A.M., Pan, J., *Research on Big Data Security Legal Guarantee Mechanism*, *Journal of Chongqing University of Posts and Telecommunications (Social Science Edition)*, 2015(3):24-29.
- [6] Zhang, X.J., Wang, W.Q., Tang, C., *Research on the Policies and Regulations of Government Data Opening and Personal Privacy Protection in China and the United States*. *Information Studies: Theory & Application*, 2016, no.1, pp.38-43.
- [7] Qi, A.M., Zhang, Z., *Identification and Re-identification: Definition of Personal Information and Legislative Choice*, *Journal of Chongqing University (Social Science Edition)*, 2018, no.2, pp.128-129.
- [8] Liu, X.T., *An Analysis of the Administrative Law Protection of Personal Information in the Era of Big Data: Connotation, Dilemma and Path Selection*, *Journal of Nanjing University of Posts and Telecommunications (Social Science Edition)*, 2018, vol.20, no.6, pp.23-31.
- [9] Wang, X.X., *the Logical Protection Model of Personal Data Forms Logic*. *Academic Exploration*, 2016, no.4, pp.53-57.
- [10] Li, C., *Administrative Law Protection of Personal Information from the Perspective of Big Data: Challenges and Optimization Paths*, *Journal of the Party School of CPC Xiamen Municipal Committee*, 2020, no.1, pp.69-74.