



InterPARES 2 Project

International Research on Permanent Authentic Records in Electronic Systems

Policy Cross-domain

Legislation Study – People’s Republic of China (Report III): Access to Information in Chinese Legislation

Sherry Xie
(translator and compiler)

August 2005

Table of Contents

List of Examined Laws, Regulations and Institutional Policies	1
Introduction	3
1. SECTION 1: Access to Archives	4
1.1 Archives Law and its Implementation Measures.....	4
1.1.1 Definition of Use.....	4
1.1.2 Definition of Publicity.....	4
1.1.3 General Articles on Use of Archives.....	4
1.1.4 Open Archives.....	5
1.1.5 Open Time.....	5
1.1.6 Use of Open Archives	5
1.1.7 Use of Unopened Archives	6
1.1.8 Use of Archives in Archival Offices	6
1.1.9 Publicity of Archives.....	6
1.1.10 Restrictions.....	7
1.2 Keeping-Secret Law	7
1.3 General Provisions on Archival Institutions’ Work	8
1.4 Regulations on Organs’ Work	9
1.5 Methods of Opening Archives in State-owned Archival Institutions.....	9
1.5.1 Purposes of Providing Access to Archives.....	9
1.5.2 Open Time and Appraisal	9
1.5.3 Procedures for Use	10
1.5.4 Procedures for Reproduction.....	10
1.5.5 Publicizing Right.....	10
1.5.6 Use Statistics	10
1.6 Interim Methods for Foreign Organizations and Individuals to Use China’s Archives	11
1.7 Examples of the Use of Specialized Archives	11
1.7.1 Management Methods for Artistic Archives	11
1.7.2 Management Methods for Archives of the People’s Court.....	11
1.7.3 Interim Methods for Opening Diplomatic Archives	11
1.8 Examples of Institution Policy on Use of Archives.....	12
1.8.1 Notice for Consulting Archives (First Historical Archival Institution of China).....	12
1.8.2 Notice to Users (Second Historical Archival Institution).....	12
1.8.3 Introduction to Archives Consultation Services (Shang Hai Archival Institution)	13
1.8.4 Prescriptions on Reproducing Archives (Archival Institution of Zhe Jiang Province, 2004) ..	13
1.8.4.1 <i>Areas of Reproduction</i>	13
1.8.4.2 <i>Means of Reproduction</i>	14
1.8.4.3 <i>Procedures for Reproducing and Publicizing</i>	14

2. SECTION 2: Access to Government Information	15
2.1 Development of Electronic Government and Openness of Government Affairs	15
2.1.1 Instructional Opinions on the Construction of Electronic Government from the State Informationalization Guidance Task Force	15
2.1.2 Administrative Permission Law	16
2.1.3 Implementation Compendium on Fully Advancing Legal Administration.....	16
2.1.4 Opinions on Strengthening the Exploitation and Use of Information Resources.....	17
2.1.5 Opinions on Further Advancing the Openness of Government Affairs	17
2.2 Current Documents Consultation Center	18
2.3 Openness of Government Information	20
2.3.1 Emergency of National Law/Regulation.....	20
2.3.2 Local Regulations on the Openness of Government Information	20
2.3.3 Stipulations on the Openness of Shang Hai Government Information	21
2.4 Relevance with Archival Institution	22
2.4.1 Regulations on Archives (Standing Committee of People’s Congress of Shang Hai, 2004) ...	22
2.4.2 Circular on Better Services for Administration Documents Consultation (Shang Hai Archives Administration, 2004)	22
2.4.3 Reactions from the State Archives Administration (re: the Openness of Government Information)	23
2.4.4 Practice in Shang Hai Archives.....	23
2.5 Privacy in the Movement of Information Openness.....	24

List of Examined Laws, Regulations and Institutional Policies

1. Administrative Permission Law of the People's Republic of China (Standing Committee of the National People's Congress, 2003)
2. Administrative Procedure Law of the People's Republic of China (Standing Committee of the National People's Congress, 1990)
3. Administrative Reconsideration Law of the People's Republic of China (Standing Committee of the National People's Congress, 1999)
4. Archives Law of the People's Republic of China (Standing Committee of the National People's Congress, 1987, revised 1996)
5. Circular on Better Services for Administration Documents Consultation (Shang Hai Archives Administration, 2004)
6. General Provisions on Archival Institutions' Work (State Archives Administration, 1983)
7. Implementation Compendium on Fully Advancing Legal Administration (State Council, 2004)
8. Implementation Measures for the Archives Law the People's Republic of China (State Archives Administration, approved by State Council, 1999)
9. Implementation Measures for the Keeping Secret Law of the People's Republic of China (State Secrecy Administration, 1990)
10. Instructional Opinions on the Construction of Electronic Government from the State Informationalization Guidance Task Force (Office of the Central Committee of CPC, Office of the State Council, 2002)
11. Interim Methods for Foreign Organizations and Individuals to Use China's Archives (State Archives Administration, 1991)
12. Interim Methods for Opening Diplomatic Archives (Archival Institution of the Ministry of Foreign Affairs, 2004)
13. Introduction to Archives Consultation Services (Shang Hai Archival Institution, accessed online on August 1, 2005)
14. Keeping-Secret Law of the People's Republic of China (Standing Committee of the National people's Congress, 1989)
15. Management Methods for Artistic Archives (Ministry of Cultural, State Archives Administration, 2002)
16. Management Methods for Archives of the People's Court (Supreme People's Court, 1991)
17. Methods of Opening Archives in State-owned Archival Institutions (State Archives Administration, 1991)
18. Notice for Consulting Archives (First Historical Archival Institution of China, accessed online on August 1, 2005)
19. Notice to Users (Second Historical Archival Institution, accessed online on August 1, 2005)

20. Opinions on Further Advancing the Openness of Government Affairs (Office of the Central Committee of CPC, Office of the State Council, 2005)
21. Opinions on Strengthening the Exploitation and Use of Information Resources (Office of the Central Committee of CPC, Office of the State Council, 2004)
22. Prescriptions on Reproducing Archives (Archival Institution of Zhe Jiang Province, 2004)
23. Regulations on Archives (Standing Committee of People’s Congress of Shang Hai, 2004)
24. Regulations on Collecting and Using Archives and Documents in Shen Zhen Economy Special District (Standing Committee of People’s Congress of the City of Shen Zhenpecial, 2002)
25. Regulations on Organs’ Work (Office of the Central Committee of CPC, Office of the State Council, 1983)
26. State Compensation Law of the People’s Republic of China (Standing Committee of the National People’s Congress, 1994)
27. Stipulations on the Openness of Shang Hai Government Information (People’s Government of Shang Hai, 2004)

Introduction

The concept of access is defined in the InterPARES Terminology Database¹ as “the right, opportunity, or means of locating and retrieving information for use.”² In China, two similar concepts are used in laws to express the idea of access to information,³ one is *use* in the revised Archives Law of 1996 (with close connection to the concept of *publicity*), and another is *openness* in the Administrative Permission Law of 2003 and regulations on government administrative activities and information. The Administrative Permission Law is the fourth and latest administration law in China aiming to reinforce the ongoing government reform and e-government development promoted by the State Council. The other three are the Administrative Procedure Law in 1989, the State Compensation Law in 1994 and the Administrative Reconsideration Law in 1999. Each in this family of government- administration-related law addresses one particular aspect in the sphere of carrying on government activities, but only the Administrative Permission Law explicitly stipulates the openness of information gathered or generated in government transactions.

For discussion purpose in this report, information is divided into archives (which is held in archival offices and archival institutions)⁴ and government information, which is in use with government departments⁵. Since there is currently no one single law specializing on access to information in China, this report examines relevant laws that have impact on this matter and local regulations address it directly. It also provides background information about the emergency of national access law/regulation.

¹ See http://www.interpares.org/ip2/ip2_terminology_db.cfm.

² One relevant concept in the database is accessibility, meaning “the availability and usability of information.” Both entries were referenced on July 10, 2005.

³ Information here is used without including library or Internet resources.

⁴ For definitions, see Sherry Xie (2005), “InterPARES 2 Project – Policy Cross-domain: Archival Legislation in China: Supplements to the Study of Archival Legislation in China (Report I),” available at

[http://www.interpares.org/display_file.cfm?doc=ip2\(policy\)archival_legislation_CHINA_SUPPLEMENT.pdf](http://www.interpares.org/display_file.cfm?doc=ip2(policy)archival_legislation_CHINA_SUPPLEMENT.pdf); and Sherry Xie (2005), “InterPARES 2 Project – Policy Cross-domain: Glossary for the Study of Archival Legislation in China,” available at [http://www.interpares.org/display_file.cfm?doc=ip2\(policy\)archival_legislation_CHINA_GLOSSARY.pdf](http://www.interpares.org/display_file.cfm?doc=ip2(policy)archival_legislation_CHINA_GLOSSARY.pdf).

⁵ Archives in archival institutions obviously include government information at its inactive phase; the distinction made here is mainly for convenience of introducing the consultation of current documents and the openness of government information in the following sections of this report. For detailed information about government documents, official records and archives in China’s practice, see Xie, “Supplements to the Study of Archival Legislation in China (Report I),” op. cit.

1. SECTION 1: Access to Archives

Access to archives, i.e., the *use* and *publicity* of information contained in archival documents, is regulated by the Archives Law, its lower-position laws and other relevant laws including the Keeping-Secret Law and the Workright Law.

1.1 Archives Law and its Implementation Measures

Chapter four in the Archives Law addresses the use and publicity of archives, and the corresponding chapter in the Implementation Measures provides further interpretations and specified rules.⁶

1.1.1 Definition of Use

The term use in the Archives Law is defined by provision 22 in the Implementation Measures as “**the reading, reproducing and excerpting of archives.**”

1.1.2 Definition of Publicity

The term publicity in the Archives Law is defined by provision 23 in the Implementation Measures: “Publicity refers to any of the following means employed to make the full or partial text of, or the particular content recorded in, the archives first known to the public:

- To release through newspapers, periodicals, books, sound and video recordings, and electronic publications;
- To broadcast or show through radio or TV stations;
- To transmit through public computer information networks;
- To announce or play in public places;
- To publish and distribute full texts or compilations of excerpts of archival materials;
- To openly sell, spread or post archival reproductions; or
- To exhibit or openly display archives and their reproductions.”

1.1.3 General Articles on Use of Archives

Article 5 in the Archives Law: “The archival work shall be carried out under the principle of Unified Guidance and Classed Management, and shall protect the integrity and security of archives in order to provide use of archives to the society.”

Article 12 encourages the cooperation between archival institutions and other cultural institutions such as museums, libraries and memorial halls that may also preserve archives in promoting use of archives.

⁶ The term “article” is used to refer the Law and the term “provision” is used to refer the Implementation Measures in this section.

Article 13, “All types of archival institutions at all levels,⁷ archival offices in organs, associations, enterprises, institutions and other organizations shall establish advanced management system to facilitate the use of archives.”

Article 14, “The management and use of classified archives, the change of classification levels and declassifications shall be undertaken in pursuance with the State’s Keeping-Secret Law and other relevant administrative regulations.”⁸

Article 19.2, “Archival institutions shall regularly publish catalogues of archives and shall improve services, simplify procedures and provide convenience for the use of archives.”

1.1.4 Open Archives

Article 19.1 stipulates “[a]rchives preserved in state-owned archival institutions shall in general open to the society thirty years after their formation. The time period for economic, scientific, technological, and cultural archives may shorter than thirty years; the time period for archives relating to national security or significant interests and for archives unsuitable for opening at the scheduled time may be longer than thirty years. The concrete time periods shall be scheduled by the state archival administration departments with approval from the State Council.

1.1.5 Open Time

Provision 20 details the opening time for archives preserved in state-owned archival institutions at all levels, which are prescribed to open archives to the society on a regular basis; catalogues of opened archives are also required to be publicized at the same time.

“1. Archives before the foundation of the Peoples’ Republic of China (including archives from Qing Dynasty and before; archives in Republican era⁹ and archives about the revolution history) shall open to the society on the effective day of this regulation;

Archives¹⁰ formed after the foundation of the Peoples’ Republic of China shall open to the society 30 years after their formation;

Economic, scientific, technological, and cultural archives may open to the society at any time.”¹¹

1.1.6 Use of Open Archives

Article 19, “The citizens and organizations of the People’s Republic of China with legal identifications may use open archives.”

Provision 22 specifies legal identifications of Chinese citizens and organizations as “letter of introduction, work identification or ID card,” and stipulates the use of open archives by

⁷ See Xie, “Supplements to the Study of Archival Legislation in China (Report I),” *op. cit.*, for relevant information.

⁸ See Section 1.2 Keeping-Secret Law.

⁹ The era after the Qing Dynasty and before the People’s Republic of China, from 1912 to 1949.

¹⁰ Without explicit reference, “archives” here refers to the archives generated by the Party and government affairs.

¹¹ There are no specific criteria or other regulations found regarding how to define these types of archives, which, in a practical sense, actually poses another obstacle to the use of archives.

foreigners and foreign organizations must be introduced by relevant departments and permitted by the archival institution.

1.1.7 Use of Unopened Archives

Article 20, “Organs, associations, enterprises, institutions and other organizations as well as citizens, based on the needs of economic development, national defence development, teaching and research as well as other works, may use unopened archives in archival institutions as well as archives held in organs, associations, enterprises, institutions and other organizations in pursuance with relevant regulations.”

The regulation on the use of unopened archives shall be made by the state archives administration departments in conjunction with the archives creating agencies.

Provision 22, the use of unopened archives by Chinese organizations or individuals must be permitted by the archival institution, and may seek for permission from relevant archival administration department when necessary.

1.1.8 Use of Archives in Archival Offices

See Article 13 in the above paragraph of General Articles on Use of Archives.

Provision 22, “The use of archives preserved in archival offices that have not been transferred to archival institutions required by Chinese organizations and individuals must apply for permission from the preserving units.”

1.1.9 Publicity of Archives

Article 22 stipulates the publicity of archives, “State-owned archives shall be publicized by archival institutions or relevant organs with the State’s authorization; without permission from archival institutions or relevant organs, no organizations or individuals has the right to publicize such archives.

For collectively- or individually-owned archives, the owners have the right to publicize their archives; but they must observe applicable regulations, must not damage national security and interests and must not infringe others’ legal interests.”

Provision 24 stipulates procedures for publicizing archives. State-owned archives can be publicized by archival institutions and archival offices depending on where the archives are held, and permissions from the archives creating agencies and/or their superior organs may be needed. Without permissions or authorizations from the preserving units or their superior organs, organizations or individuals who use state-owned archives have no right to publicize archives.

The owners of collectively- or individually-owned archives or other non-state-owned archives have the right to publicize their archives in compliance with the State’s regulations on secrecy, and must not damage the interests of the State, society, collective units and other citizens.

1.1.10 Restrictions

Article 21: “The units or individuals who transfer, donate or deposit archives to archival institutions are entitled a priority status of using their archives; and they may offer suggestions on restricting the use of some parts of their archives that are not suitable for opening to the public. Archival institutions shall protect their legal interests.”

Provision 26: “The use and publicity of archives must not violate the State’s relevant laws and regulations on protecting intellectual property.”¹²

See Sherry Xie (translator and compiler) (2005), “InterPARES 2 Project – Policy Cross-domain: Legislation Study – People’s Republic of China (Report II): Workright Law”¹³ for a discussion of workright-related rights and fair use for archives.

Provision 21, “The provision of archives to the society in all types of archival institutions at all levels shall gradually realize the employment of micro-reproductions of originals; the micro-reproductions and other types of reproductions of archives shall have equal legal effects when bear the signature or seal of the juridical representative of the archival institution.”

Provision 16 in the Implement Measures for the Archives Law, “The change of classification levels and declassification of classified archives in article 14 in the Archives Law shall be handled in accordance with the rules stipulated by the Keeping-Secret Law and its Implementation Measures.”

See Keeping-Secret Law for its impact on the use of archives.

1.2 Keeping-Secret Law

Article 2, “National secrets refer to items relating to national security and interests and shall only be known by limited personnel within a specified time period prescribed in accordance with legal procedures.”

Article 8, “National secrets include the following secret items that qualify article 2 in this law:

- secret items in important decisions on national affairs,
- secret items in national defense development and armed force activities,
- secret items in diplomatic and foreign affairs as well as items assuming responsibilities of keeping secrets from outside,
- secret items in economic and societal developments,
- secret items in science and technology,
- secret items in activities of protecting national security and of investigating criminals, and
- other national secret items classified by the state secret-keeping departments

¹² Intellectual property related laws in China include the Patent Law (& implementation measures), the Workright Law (& implementation measures), the Trademark Law (& implementation measures), the Contract Law, etc. Regulations include Collective Management for Workright, Protection of Computer Software, Protection of Layout Design of Integrated Circuit, etc.

¹³ Available at

[http://www.interpares.org/display_file.cfm?doc=ip2\(policy\)archival_legislation_CHINA_WORKSRIGHT_LAW.pdf](http://www.interpares.org/display_file.cfm?doc=ip2(policy)archival_legislation_CHINA_WORKSRIGHT_LAW.pdf).

The secrete items of political parties satisfying the stipulation of Article 2 are national secrets.

Article 9, “The classification levels of national secretes are vital-secret, important-secret and general-secret.”

Article 12, “Documents and materials that are national secretes shall be marked with classification levels in accordance with articles 9, 10 and 11 in the Law.”

Article 14, “Organs and units shall decide the secrecy time periods when decide classification levels for national secrete items.”

Article 15, “The changes of classification levels and secrecy time periods shall be made accordingly with the changes of circumstances in a timely manner. The changes of classification levels and secrecy time periods shall be decided by the organs or units that originally determined the classification levels and time periods; they may be determined by their superior organs as well.”

Article 16, “The national secrete items shall be declassified automatically when their secrecy time periods expires; if the time periods need to be prolonged, the decision shall be made by the organs, units or their superior organs that originally determined the time periods.

The organs, units or their superior organs that originally determined the classification levels and secrecy time periods shall declassify national secrete items in a timely manner when they are not needed to be kept as national secretes.

Article 18 stipulates a series of means of protecting national secrets, one of which relating to documents and materials is:

For documents, materials and other objects that are vital-secrets, without approval from the organs, units or their superior organs that originally determined their classification levels, reproducing and excerpting are prohibited.

1.3 General Provisions on Archival Institutions’ Work

The use of archives in this regulation (which is still effective) centers on the use of historical archives.

Provision 3 lists the basic responsibilities of archival institutions. The need “to actively provide services for using archives,” among other managerial tasks that aims to serve the development of modernization, is one of them.

Provision 4 prescribes archival institutions must establish rigorous policies and mechanism to protect secrets of the Party and the State.

Provision 18 states archival institutions shall open historical archives for use in accordance with relevant stipulations.

Provision 21 prescribes procedures for using archives in archival institutions, which include:

1. users must have an official letter of introduction from the organization where the user works, indicating the user’s identity, the purpose and the area of the use;

2. for specialized research projects requiring heavy use of archives, research plans must be approved by the superior organs and sent to relevant archival institutions in advance; and
3. reproduced archives needed by the user (except for certificate like materials) shall all be sent by the archival institution to the archival office of the organ where the user belongs to be kept; the reproduced archives are prohibited to be publicized, displayed, exhibited or re-reproduced in full text by any method; reproduced archives with classification as vital-secret shall be returned after use.”

1.4 Regulations on Organs’ Work

Provision 21, “Archival offices shall establish policies for using archives; shall determine different areas and prescribe different sanctioning procedures for use of archives according to their classification levels.

Archives kept in archival offices in organs are current archives and shall mainly be used by the organ and its direct superior organs. They shall not be opened. External use must be approved by superior organs.”

1.5 Methods of Opening Archives in State-owned Archival Institutions

1.5.1 Purposes of Providing Access to Archives

The purposes of using archives in this regulation are “to exploit archives’ informational resources, to serve the development of both the socialism material civilization and spirit civilization.”

1.5.2 Open Time and Appraisal

Provision 2, “Archives preserved by state-owned archival institutions at all levels shall in general be opened to the society **thirty years** after their formation; economic, scientific, technological and cultural archives may be opened before the years; archives relating to national significant interests such as national defence, diplomatic, public security and national security may be opened **fifty years** after their formation. All archives mentioned above shall continue to be delayed to be opened by archival institutions if they still need to be kept as secrets or be controlled for use.”

Provision 3, “State-owned archival institutions at all levels shall arrange appraisal groups to appraise archives that have reached their open year in a timely manner; in accordance with relevant regulations, archives that does not need to be kept as secrete or be controlled for use in their determined secrecy time periods, the archival institution may open them, with approval from the archival administration department at the same level, or sanction from government at the same level when necessary.”

Provision 4, “The open of archives deposited in the state-owned archival institutions at all levels shall be decided by the depositor or their legal inheritors. If there is no legal inherit, the open of their archives shall be handled in accordance with provisions 2 and 3 in this regulation.”

1.5.3 Procedures for Use

Provision 7 states the procedures of using open archives in state-owned archival institutions, including:

1. mainland citizens may use archives directly in archival institutions with ID card or employee card/letter of introduction;
2. overseas Chinese may use archives directly to search their histories and the histories of their relatives with valid identifications; to use other open archives, they must be introduced by their inviting, cooperating or receiving units on mainland and apply for the use to the State Archives Administration or relevant archival institutions 30 days in advance indicating their identities, the purpose and area of the use and other relevant information; and
4. procedures for foreign organizations and foreigners to use archives are prescribed by the Interim Methods for Foreign Organizations and Foreigners to use China’s Archives.

1.5.4 Procedures for Reproduction

Provision 10 states the procedures for reproducing archives in state-owned archival institutions. Users must: (1) fill out a reproduction request form, and (2) submit the form to the head of the archival institution for approval. The content and quantity of reproduced archives are decided by the archival institution, and selected archives must be copied by the staff at the archival institution.

1.5.5 Publicizing Right

Provision 11, “The publicizing right of archives preserved in state-owned archives belongs to the archival institution and other relevant units with authorization from the State. Archives excerpted or copied by users may be cited in research works if they are not in violence with the State’s relevant regulations, but publicity through any other means are prohibited. Users shall explicitly refer the preserving unit and accession number when cite archives in their works.”

Provision 12 encourages archival institutions to publicize archives in various formats through compiling, compiling with other units, authorizing relevant units to compile, etc.

1.5.6 Use Statistics

Provision 14, “The list of opened fonds, quantity of used archives and significant effects of using archives in archival institutions shall be annually submitted to the archives administration departments at the same and superior level.”

1.6 Interim Methods for Foreign Organizations and Individuals to Use China’s Archives

Provision 2, “Foreign organizations and individuals may directly go to state-owned archives to read, reproduce and excerpt open archives or consult them through other means such as correspondence and telephone.”

Provision 3 prescribes procedures for foreign organizations and foreigners to use archives that are not related to their family histories, which are similar to those for overseas Chinese (e.g. use application, 30 days in advance, etc.)

Provision 4, “The use of deposited archives by foreign organizations or foreigners shall ask for permission from the depositor.”

Provision 6 states same reproducing procedures as those in the Methods for Opening Archives.

Provision 7 states same procedures for citing archives in research works as those in the Methods for Opening Archives.

1.7 Examples of the Use of Specialized Archives

1.7.1 Management Methods for Artistic Archives

Provision 27 prescribes, “When it is necessary to present, exchange or sell reproductions of state-owned artistic archives, preserving units must report to their superior departments for approval.”

1.7.2 Management Methods for Archives of the People’s Court

Provision 15 states that archives of the court can only be consulted by the Party Committees, the Standing Committees of People’s Congress and other relevant courts, public security organs and procuratorates who possess official letter of introduction and approvals from relevant heads.

Provision 16, “Other units who need to consult court archives must have letter of introduction from the government where they work and must observe relevant regulations on such investigation. Archives relating to national secret and personal information and archives having adverse effects to the society cannot be consulted. Lawyer’s consultation for archives shall be handled through the original case undertaker. Excerpting and copying of materials in files are in principle prohibited except for conclusive materials such as sentences, rulings and mediations.”

Provision 19, “Archival personnel must strictly observe regulations, protect national secrets and must not extend areas for use or disclose contents of archives.”

1.7.3 Interim Methods for Opening Diplomatic Archives

Provision 5 states procedures for use of open diplomatic archives. Users need to make a use appointment 20 working days in advance for the use with indications of their identities, the purpose of the use as well as the volumes for use.

Provision 7 states reproducing archives is in principle limited to archives that are publicized already. For reproducing open archives, approval for reproduction request is required and the same reproduction procedures in the Methods for Opening Archives apply.

Provision 12 states same procedures on publicizing archives and citing archives in research works as in the Methods for Opening Archives.

1.8 Examples of Institution Policy on Use of Archives

1.8.1 Notice for Consulting Archives (First Historical Archival Institution of China)

Established in 1925, the First Historical Archives of China is one of the three national archival institutions in China¹⁴, preserving in particular the archives of the central state organs and imperial families in Ming and Qing two Dynasties. Some of the clauses in this notice are listed below:

Users must have valid identification with explicit purposes.

Except for pencils and notebooks for excerpting and transcribing, other stuff such as reference books, cameras and computers are prohibited to be brought into the reading rooms.

The archival institution does not provide original archives that have micro-reproductions, provided the readability of the reproductions is acceptable.

Upon leaving, users must fill out the Archives Use (excerpt) Form for excerpted or transcribed archives and submitted the form with excerpts to the help desk for examination.

Users must fill out the Archives Use (photo) Form with details and purposes of the use when take photos of archives. Photo reproduction only takes place with approval.

Any archives excerpted or reproduced in this archival institution must not be publicized or published without written authorization from this archival institution; violation may be pursued with law liabilities.

1.8.2 Notice to Users (Second Historical Archival Institution)

The Second Historical Archives of China (SHAC) was established in 1951 and preserves archives of the central governments and their subordinate organs of the Republican era of 1912 to 1949. Relevant clauses in this Notice are listed as follows:

In pursuance with the Archives Law and its Implementation Measures, all holdings of the Second Historical Archives of China (SHAC) are available to the public with exceptions of files relating to personal affairs or of those that are closed. Both Chinese citizen and foreign readers must obtain the SHAC's approval before use the opened archives. The SHAC will not provide original materials if they have been microfilmed or photocopied.

1. Users must present both a letter of introduction from their work unit and legal identification (ID card, military officer's card, employee's card, passport, etc.) to the

¹⁴ The other two are the Archival Institution of the Central Committee of the CPC and the Second Historical Archival Institution of China.

SHAC receptionist and complete a registration form.

2. Users must put all carryings-on in lockers provided by this archival institution, including suitcases, purses, books, notebooks, folders, paper, etc. (except for computers and pencils), before entering the reading areas.
3. Users' seats at the Reading Room will be appointed by the receptionists at the Public Service Department.

9. Users should use specialized paper provided by this archival institution to excerpt archives. Tools allowed for excerpting are graphite pencils and notebooks.
10. Users must fill out the Registration Form for Reproducing Archives when apply for photocopying, taking photo, scanning or other reproduction of archives; specialized slips are required to be used to indicate the extent of the reproduction by marking the starting and end pages.
11. Users must submit their photocopies or extraction papers to staff for examination as they leave the reading areas.
12. The excerpted or reproduced archives in this archival institution are restricted to be referenced by private research or cited in works and must not be publicized, transferred or published in full text by any method.

1.8.3 Introduction to Archives Consultation Services (Shang Hai Archival Institution)

This policy details the procedures of requesting and using both open and unopened archives that are similar to other institutional policies. But the means of reproducing archives are extended to include database downloading, CD burning and electronic transferring.

1.8.4 Prescriptions on Reproducing Archives (Archival Institution of Zhe Jiang Province, 2004)

1.8.4.1 Areas of Reproduction

Opened official documents formed in and passed among organs, associations, enterprises and institutions in the provincial government and its subordinate units;

Unopened policies and regulatory documents¹⁵ (documents made with legal authorities that have universal applications to citizens, juridical persons and other organizations and can be used repeatedly) formed in organs, associations, enterprises and institutions in this province;

Laws, regulations, policies and regulatory documents provided by current document consultation center;

Compilations of openly published or opened documents and other materials; and

Archival materials satisfying requirements prescribed by the Archives Law and the Keeping-Secret Law and approved by this archival institution.

1.8.4.2 Means of Reproduction

Depending on the formats of the archives and users' needs, photocopies, micro-reproductions, paper prints, movies copies, scans and other services are available for file reproductions; with approval from this institution, users may use camera or video-recorder to make copies by themselves.

1.8.4.3 Procedures for Reproducing and Publicizing

Names of the archival materials, file titles and page numbers must be filled out into forms when reproduce archives; users reproduce archives, except for publicized ones, must submit written application for permission.

¹⁵ For the concept of document, see following section of Access to Government Information.

2. SECTION 2: Access to Government Information

One can easily gain the impression from the first section in this report that the management of archives in China is much more focused on preservation and secrecy other than the use and openness to the public; the purpose of opening archives and the corresponding services provided are mainly for cultural and academic developments, with definitely no concerns about the openness of government information and its critical contribution to government accountability - not even at the theoretical level.

With the pass of the WTO's Protocol on Accession of China in 2001, however, a new movement of constructing administration laws close or similar to western/international practices¹⁶ aiming to push and reinforce government reform has begun. In fact, in order to regain the WTO member country status, Chinese government had done lots of preparation work including reforming and developing its administration law system. The Administrative Procedure Law in 1989, the State Compensation Law in 1994 and the Administrative Reconsideration Law in 1999 were efforts of regulating government activities to comply with the requirements of WTO protocol, since, from the angle of law, the objects directly regulated by WTO protocol are governments and their behavior. As stated in the introduction section of this report, the openness of government information had not been addressed until the construction of the Administrative Permission Law in 2003, which exhibits a much deeper understanding about the significance of opening government information, legislation processes and law enforcement processes in a law-ruling country. To open government information including current government documents and information relating to both the processes and results of government administrative transactions is now realized an effective mechanism to make government transparent and to prevent corruption (or, to "build sunshine governments" in Chinese expression). This can be definitely viewed as an unprecedented revolution in China's history.

This section discusses two steps of accessing government information:

- consulting current documents; and
- acquiring government information through government publications and provisions under request.

2.1 Development of Electronic Government and Openness of Government Affairs

2.1.1 Instructional Opinions on the Construction of Electronic Government from the State Informationalization Guidance Task Force

The development of electronic government is one emphasis of the national informationalization work in the following future and it will be driving the informationalization of the national economy and society advance.

¹⁶ Although traditionally administration laws belong to the category of domestic public law, to learn from the legal practices in western/developed countries in the same fields has gained consensus in China's legal community.

To construct and conform unified electronic government network. ...The electronic government network consists of government internal network and government external network with physical separation. The external network shall be logically separated with Internet. ... The government external network is the government's business network designed for its administration departments to operate service-related activities for the society. ...the basic unified internal and external network platform for electronic government shall be constructed within one year and be gradually perfected while operating.

Government departments at all levels shall accelerate to open government information. ...To construct and conform integrated gateway websites of central and local governments in two years; to facilitate the openness of government affairs.

To speed up the research and construction of administrative laws, regulations and policies about electronic signature, openness of government information, the security of network and information as well as project management of electronic government affair. ...

2.1.2 Administrative Permission Law

Article 5, "The placement and implement of administrative permissions shall follow the principle of openness, equity and righteousness.

Stipulations relating to administrative permission shall be publicized; those that are not publicized must not be the basis of implementing administrative permissions. The implementation and results of administrative permissions shall publicize except for those relating to national secrets, commercial secrets or personal privacy."

Article 31, "Administration organs shall publicize the... (procedures and supporting documents) for administration permission stipulated by laws and regulations as well as the application sample in their office.

Administration organs, when enquired about interpretation or explanation on publicized information by applicants, shall explain and provide accurate, reliable information."

Article 33, "Administration organs shall establish and complete relevant systems, carry out the development of electronic government, publicize administrative permission proceedings on their websites and facilitate applications submitted through electronic methods."

Article 40, "The decisions of granting administrative permissions by administration organs shall be publicized, and the public has the right to consult such decisions."

2.1.3 Implementation Compendium on Fully Advancing Legal Administration

The administration management actualized by administration organs shall be opened to public.

To accelerate electronic government constructions, to advance construction and operation of online government, and to enlarge the range of government online transactions.

To advance the openness of government information. Administration organs shall open government information except for matters relating to national secret, commercial secrets protected by laws and personal privacy. The public has the right to consult opened government

information. Administration organs shall provide convenience for public to consult government information.

To refine administration decision-making procedures. The matter, rationale and results of the made decisions shall be open to public and the public has the right to consult such materials. Decision-needed matters involving the society at large or closely relating to public interests shall be publicized to the society and shall collect comprehensive opinions through forms of symposium, hearing and argumentation.

Administration laws, department regulations and regulating documents as the basis for administration management shall be publicized on government gazette, newspapers and periodicals with massive distribution and government websites. Government gazette shall be convenient for citizens, juridical persons and other organizations to acquire.

To consolidate and complete the system of evaluating administration enforcement files. Administration organs shall establish files related to administration punishment, administration permission and administration enforcement. The relevant monitoring and inspecting records, evidential materials, and law executing documentations shall be filed and archived.

The **Implementation Opinions** on this Compendium by the State Council in the same year specifies individual ministries to accomplish the above tasks.

2.1.4 Opinions on Strengthening the Exploitation and Use of Information Resources

To establish and refine the system for government information openness.

To accelerate the openness of government information, to make regulations on opening government information and to compile catalogues for government information.

To provide convenience for public to obtain government information through making the best use of media including government gateway websites, influential news websites, newspapers and magazines, broadcast and TV, as well as locations such as archival institutions and libraries.

2.1.5 Opinions on Further Advancing the Openness of Government Affairs

To advance the openness of government affairs means:

To strictly pursue laws, regulations and prescriptions by relevant polices;

To open truthfully all types of matters about administration management and public services except for those relating to national secrets, commercial secrets protected by laws and personal privacy;

To open matters that shall be opened utilizing convenient and quick methods in a timely fashion in accordance with established system and procedures;

To actively explore and advance the legislative work about the openness of government affairs; To accelerate the process of making Regulations on the Openness of Government Information; and

To establish and complete the system of taking initiative to publicize information and provide information under request. Matters that shall be known or participated by the public shall

be opened actively and timely. Matters that temporarily are not suitable for opening or cannot be opened shall report to superior organs. The change, cancellation or termination of opened matters shall be publicized timely with explanations. Items that involve some persons or portion of matters shall be opened to applicants in accordance with prescribed procedures; for the portion that cannot be opened, explanation and clarification shall be provided timely.

Regions and departments with permissive conditions shall consider making local regulations and policies, gradually bringing the openness of government affairs into legalized track.

These law and regulations directly give rise to the establishment of current government documents consultation centers and the pass of bylaws regarding openness of government information at both provincial and municipal levels.

2.2 Current Documents Consultation Center

In the most common use, the concept of document in China has a very narrow definition. It refers to laws, regulations and policies issued by the State, governments at all levels and their departments including instructions from superior organs. They are called “red-head documents” in the language of general public because they are created with red color headlines. Current documents are such documents that are in effective, i.e. they are used by government departments, administrative organs to transact and they influence every aspect of general public who, however, had no right to access before the government administration reform and e-government development promoted by the State Council.¹⁷

In 2000, the city of Shen Zhen established the first institute for consulting open current documents; and up to date, there are 2367 among more than 30000 archival institutions across the country that have begun to provide services for current document consultation.¹⁸

Regulations on the Collecting and Using of Archives and Documents in Shen Zhen Economy Special District

Provision 3 spells out the definition of archives which is similar to that in the Archives Law. It also defines *documents* as “documentary materials formed in official activities by the state organs and other state-owned units and are preserved in document centers before their transfer to archival institutions.”

Provision 4, “State organs, social associations and individuals are granted by laws the right of using archives and documents; they also have obligations to protect the integrity, accuracy and security of archives and documents.”

¹⁷ For emphasizing purpose, government documents here are not equal to government records of which the former constitute a part. Government records include both the records generated in the process of carrying on activities, which may not accessible due to the nature of the matter or other legal requirements, and the records that are results of regulation-making processes, *government documents*, which should not require privilege to access.

¹⁸ The State Archives Administration. http://www.sd.xinhuanet.com/news/2005-07/03/content_4560517.htm, accessed July 3, 2005.

Provision 8, “The document centers established by the city and borough governments are institutions that centrally preserve and provide access to documents after transactions completed by the same-level organs or institutions. Their main duties are:

1. acquire documents that are completed by the same-level organs or institutions;
2. arrange, appraise and preserve acquired documents;
3. transfer documents that needs long-term preservation to the city or borough archival institutions; and
4. provide use of documents to state organs, social associations and individuals.

Provision 21, “The document centers shall ensure the priority of the documents transferring units to use their documents and provide convenience for other organs to use.”

Provision 22, “Archives and documents preserved in public archival institutions and documents centers shall be open to the society, with exceptions to those that require secrecy or other restrictions in accordance with laws.

Social organizations and individuals may use open archives and documents with legal and valid identifications.

Public archival institutions in this regulation refer to the city and borough archival institutions as well as specialize archival institutions.¹⁹

Provision 23, “The public archival institutions and document centers shall publicize the opened archives, spectra and catalogues of documents and methods for use to the society.”

Provision 24, “The public archival institutions and document centers shall take the following methods to provide archives and documents to the society:

1. in-house consultation;
2. online retrieval;
3. in-person delivery;
4. fax or mail;
5. provide certification for archives and documents;
6. compile archives, documents and reference materials; and
7. host archives and documents exhibits.”

Provision 25, “The public archival institutions and documents centers shall publicize information about archives and documents at suitable time based on the needs of the society.”

Provision 27, “The social associations and individuals who are in disagreement with the rejection of use that is grounded on the non-publicity of archives or documents from the public archival institutions or the documents centers shall have the right to appeal to the archives administration departments.”

Provision 28, “Encourage enterprise and private archival institutions to open archives to the society in accordance with laws.”

¹⁹ See Xie, “Supplements to the Study of Archival Legislation in China (Report I),” *op. cit.*, for relevant information about different types of archival institutions in China.

2.3 Openness of Government Information

2.3.1 Emergency of National Law/Regulation

In 1999, a special task force established in the Chinese Academy of Social Science began to do research on the construction of openness of government information. In May 2005, this task force accepted the entrustment from the State Council and began to draft the Regulations on the Openness of Government Information. In June 2004, the draft was completed with 7 chapters, 42 provisions and estimated about 130 thousand words. It includes rationale, interpretations, background information and faced difficulties of making the regulation. The first difficult of such is to make the decision of making an access law or regulation. A law is the highest level of authority and should address the matter most effectively, but it takes much longer time to get a law constructed and passed and there is an urgent need expressed by the delegates of the National People's Congress to have a law or regulation on the openness of government information. To make a regulation is much faster but it cannot cover all areas relating to the openness of information, e.g. the People's Congress at all levels, courts, and the Procuratorates. Other difficulties include questions such as how to define or set the range for personal information and how to define national secrets, and if there is the need to revise the Keeping-Secret Law, etc. These difficulties are the reasons for the long delay of the pass of the draft regulation or the decision of making a law rather than regulation; the Electronic Signature Law conceived at that same time already passed in August 2004 and came into force in April 2005.

2.3.2 Local Regulations on the Openness of Government Information

Due to the encouragement from the national regulations on developing electronic government, many local governments are actively involved with the building of transparent governments and accordingly the openness of government information. From the year of 2003, a quite number of municipal and provincial governments passed local regulations on the openness of government information. The most salient feature of these regulations is the overall principle of “open is the exception and restriction is the exception”, which is on the sharp opposite of the principle of “restriction is the rule and open is the exception” in the past. Except for national secretes, commercial secretes, personal information and some other exceptions, all types of government information relating to economy, society order and public services, in particular all types of service information relating to citizens' study, living, work, investment to and development of enterprise is regulated to be opened or provided under request. Below is a snapshot of these regulations with a “first” feature in some aspect.

In January 2003, Guang Zhou municipal government passed and implemented its Stipulations on the Openness of Guang Zhou Government Information and became the first local government in China that pushes the open of government affairs and the open of government information;

In February 2004, Shen Zhen Economy Special District began to implement its Methods on Online Opening of Shen Zhen Government Information and became the first government that provides government information through Internet;

In April 2004, the city of Fo Shan started its unified platform of managing, publicizing and using electronic documents generated by the government's electronic administration system, and became the first current government consultation Web site. With a database that currently possesses twenty six thousands government documents and regular updates, all opened current documents issued by all administrative departments in the government can be searched and read through this Web site.

In January 2004, the Stipulations on the Open of Shang Hai Government Information was passed and publicized; Shang Hai became the first provincial government that enacted such regulation.

In August 2004, three months after the enactment of the openness regulation, the first law case against government regarding the openness of government information in China was openly investigated in one of the District Courts in Shang Hai.

2.3.3 Stipulations on the Openness of Shang Hai Government Information

On the first of May in 2005, the Stipulations on the Openness of Shang Hai Government Information came into force. Accordingly, a section of information openness appears in the newly modified government gateway Web site, China Shang Hai, covering almost all government information. This gateway Web site is designed to provide access to the government's important decisions, rules, regulations, policies and authorized information at first time. The Shang Hai openness regulation explicitly prescribes that any government information relating to economy, society management and public service except for information restricted by law shall be publicized or provided under request within 30 days after its creation. There are three main channels for the public to access government information, the first is the press conference regularly held by the government, the second is the China Shang Hai gateway Web site and the third is consultation rooms in archival institutions and archival institutions' websites.

Excerpts from the regulation:

Provision 1 (Purpose and Rationale): This regulation is made in accordance with relevant stipulations from laws and regulations and in conjunction with actual situations of this city in order to establish a fair and transparent administrative management system, to ensure the knowing right of citizens, juridical persons and other organizations, to protect their legally granted interests and to monitor government activities.

Provision 2 (definitions): Government information in this regulation refers to the content relating to economy, social management and public service held by government organs and carried on paper, film, cassette, disc and other electronic memory media. Government organs in this regulation refer to people's governments at all levels of this city and their departments, agencies and other organizations legally executing administrative authorities.

Provision 3 (principle): Except for the exceptions listed in provision 10 in this regulation, any government information relating to economy, social management and public services shall be open or provided upon application.

Provision 7 (openness request right): Citizens, juridical persons and other organizations have the right to request government information from government organs in accordance with this regulation.

Provision 8 (areas of opening government information on their own initiative): Government organs shall take the initiative to open the following government information to the society:

Provision 10 (exceptions of openness) the following government information is excepted from publicity:

1. national secrets;
2. commercial secret or its open may lead to the disclosure of commercial secret;
3. personal privacy or its open may cause infringement to the right of personal privacy;
4. that is in the process of investigation, discussion or transaction; however, those prescribed by laws, regulations or other provisions in this regulation is not included;
5. that relating to administrative enforcement and its open may influence the enforcement activities of inspection, investigation, collection of evidence or may threaten individual safety; and
6. other situations prescribed by laws and regulations as exceptions.

2.4 Relevance with Archival Institution

2.4.1 Regulations on Archives (Standing Committee of People's Congress of Shang Hai, 2004)

Provision 31, “The comprehensive archival institutions at the levels of municipality, district and county are convergent consultation locations for the government at the same level; shall provide opened government information preserved for the government for public to consult.”

2.4.2 Circular on Better Services for Administration Documents Consultation (Shang Hai Archives Administration, 2004)

Archival offices in organs shall participate actively in the work of opening the organ's information; compile directories and catalogues for opened information and provide good services for consulting opened information.

Archival offices in organs shall actively assist the document creating office in the organ to transfer current documents to relevant archival institutions in a timely manner. In order to facilitate the consultation by the public, the transferred documents shall in the formats of two official texts, one electronic text and one copy of drafting information.

To accelerate the digitization of current documents, to provide catalogue search on the websites of archival institutions and on government internal and external networks, and gradually switch to full text retrieval. To establish and complete a system of acquiring,

managing, and consulting current document and government gazette with streamlined links, seamless transfer and effective operation.

2.4.3 Reactions from the State Archives Administration (re: the Openness of Government Information)

The implementation of the system of opening government information will dramatically shorten the open time of archives. The government information defined in the Shang Hai openness regulation includes government information held by archival offices in organs and by state-owned archival institutions.²⁰

In accordance with Provision 20 in the Implementation Measures of the Archives Law that “economy, science, technology and cultural archives may open to the society at any time,” archival departments shall make the concrete range, opening criteria, implementing methods and service mode for archives that can be opened earlier than the general rule of 30 years.

Advantages of setting archival institutions as convergent consultation locations include:

1. to provide access for general public especially for underdevelopment communities (without personal connection to Internet);
2. to reduce management cost caused by dispersed consultation locations and avoid repeated construction;
3. to provide services on 365 days basis rather than the organ’s fixed working hours; and
4. to converge both historical and current information and provide a comprehensive consultation for users.

2.4.4 Practice in Shang Hai Archives

The Shang Hai Archives has the undisputable advantage of constructing the unified platform crossing institutions and databases because:

1. the system of transferring the opened government information guarantees the source of archival institution at all levels, which have implemented a convenient, effective and expedite transfer system with unified standardized format; the newly adopted method of online transferring ensures the quantity, quality and speed of information collected by archival institutions;
2. the Archival Institution effectively collects information from all districts and counties in this city through the system platform of the archives’ catalogue center, which collects opened government information in an independent database and provides access through the Internet; and
3. the advanced Shang Hai Archival Information Network managed by the Shang Hai Archives Administration operates online consultation system for opened government information besides the gathered rich archival information resources.

²⁰ There is currently ongoing discussion regarding the 30 years time period for archives.

All of these advantages make it possible to provide services of online transfer, consultation, making request and reference of government information.

2.5 Privacy in the Movement of Information Openness

All local regulations at both municipal and provincial levels exclude private information from the openness of government information, without definition of private information however. Although some articles in the laws such as the Keeping-Secret Law and the Anti-unfair Competition Law (1993) to which other exceptions of the openness of government information (i.e., national secrets and commercial secrets) are referenced may become obstacles because of their unawareness of the openness of information at their construction time and may be revised in the future, they still currently serve as the basis for identifying national secrets and commercial secrets. But there is no laws covering the identification of private information. The draft of the Regulations on the Openness of Government Information proposes the definition of personal information as “information other than:

1. personal information stipulated by laws to be opened;
2. personal information the openness of which is necessary for protecting the security of life, health or property after gone through relevant procedures;
3. personal information of staff in government organs for the purpose of performing job duties; and
4. personal information agreed to be opened by the person him/herself.

Personal information means the piece of information by its own or the combination of pieces of information that can identify particular individual such as name, address, birth date, ID number, medical record, personnel record, photo and the like.

According to the news report on November 22, 2004, the Informationalization Office in the State Council is considering China’s Personal Data Protection Law.