

# Research on Administrative Law Protection of Personal Information in the Era of Big Data

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**Abstract:** *Personal information has the attributes of personal dignity and personal interests. In the era of big data, the infringement of personal information is common. Although the introduction of the "Personal Information Protection Law" has improved the situation of personal information infringement to a certain extent, there are still lax administrative supervision and difficulties in administrative relief in the administrative protection of personal information. Therefore, it is necessary to improve the administrative supervision system and strengthen administrative relief measures to protect citizens' personal information.*

**Keywords:** Personal Information, Big Data, Administrative Law Protection.

## 1. Introduction

We are now in an era surrounded by the Internet. Although the Internet has greatly improved people's living standards, things have two sides. While enjoying the convenience of the Internet, we may also be harmed by the Internet. When people enjoy the convenience of the Internet, they often authorize various software to collect their information and share their life dynamics on the Internet. Our search records, call recordings, mobile phone camera permissions, preferences, purchase records, etc. are collected and used by Internet companies to a degree beyond our imagination. However, since the law is lagging, it cannot fully regulate new and rapidly developing things in a timely manner, resulting in the collection and use of personal information entering a disorderly expansion, posing a great threat to people's personal information security. According to the characteristics of administrative law, the protection of personal information can be achieved through pre-prevention, in-process supervision, and post-event punishment. Administrative agencies can use strong public power to protect citizens' personal information to the greatest extent. Therefore, incorporating personal information protection into the scope of administrative law can promote the development and improvement of the administrative law system to a certain extent.

## 2. The Concept of Personal Information

### 2.1 Definition of Personal Information

There are three theories in the academic community regarding the definition of personal information: privacy theory, identifiability theory, and relevance theory. The "privacy theory" mainly refers to the fact that the personal information to be protected must be information that the individual is unwilling to show to the outside world or that the individual believes is too sensitive to be known to others. This theory holds that personal information is merely an expansion of the right to privacy and should be included in the right to privacy. However, this undoubtedly limits the scope of personal information. For example, when taking a Didi taxi, the user authorizes Didi to provide the company with the geographic location. This does not mean that the information is information that the user is unwilling to show to the outside

world or is sensitive information. According to the interpretation of the "privacy theory", the information does not belong to personal information and is not protected by the Personal Information Law. This is obviously unreasonable.

The "relevance theory" mainly refers to the fact that any information related to an individual is included in the scope of personal information, including all facts and evaluations such as physical, identity, status, etc. However, this theory is exactly the opposite of the "privacy theory". The scope of personal information included is too broad, which will not be conducive to the effective use of data and will hinder the development of science and technology.

The "identifiability theory" is right between the "privacy theory" and the "relevance theory". The "identifiability theory" mainly refers to the fact that a certain information can directly or indirectly identify a certain subject. On the contrary, even if the information cannot identify a specific natural person, it should not be included in the scope of personal information protection. My country's current Personal Information Protection Law uses the "relevance theory" to define personal information.

The reason why the state has issued a law specifically to protect personal information is because of the value of information. Therefore, only information that can directly or indirectly identify the corresponding subject is worthy of national protection. For example, ID card number, education information, or marriage and family information, which can directly or indirectly identify the corresponding individual, has corresponding value. On the contrary, if the information cannot identify a specific subject, it is not worthy of being included in the scope of personal information protection.

### 2.2 Legal Attributes of Personal Information

When discussing the protection of personal information and the legal means to protect personal information, it is necessary to understand the legal attributes of personal information so as to better determine the scope of personal information protection. At present, there are mainly the following theories in academia: personality right object theory, ownership object theory, privacy right object theory, and property right object theory.

The theory of the object of personality rights mainly refers to the inclusion of personal information within the scope of personality rights. If someone infringes on the personality rights of the counterparty, the other party can be required to bear the corresponding liability for damages on the grounds of infringement of personality rights, such as apology, cessation of infringement, elimination of influence, restoration of reputation, and even mental damages if serious consequences are caused. Whether personal infringement occurs between private subjects or between public power subjects and private subjects, it can be included in the personality rights of the Civil Code and protected as a civil right.

The ownership object theory mainly refers to the fact that personal information is a kind of property right, and personal information should be protected within the scope of property right ownership, that is, personal information can be possessed, used, benefited from and disposed of like ownership, and the subject of personal information is the owner of personal information. No matter how others collect personal information and how the collected information is used, it shall not affect the use of the information by the owner of personal information. However, this theory excludes the attribute of personal dignity of personal information. For example, if others infringe the ownership, generally only compensation for losses and restoration of the original state are required, but if personal information is leaked, it cannot be restored to its original state at all.

The privacy right object theory holds that personal information falls within the scope of privacy rights and can be protected in the same way as privacy rights. However, if personal information is simply included in the scope of privacy rights, then the social public interest attribute of personal information will be excluded [1]. For example, in the recent COVID-19 incident, if personal information is completely included in the scope of privacy rights, then it will add unnecessary burdens to the control of the epidemic, and China's handling of the epidemic will not be so successful.

The property right object theory states that personal information property rights are a new type of property ownership, a type of property ownership that can and can only exist in the context of commercial use of personal information [2]. In today's big data era, personal information has significant commercial value, and every company will do everything it can to obtain all available data. As a type of property right, personal information is particularly prominent in crimes involving personal information.

Regarding the above four theories, I am more in favor of the theory of the object of personality rights. Personality rights are the rights that people should enjoy as human beings. They are rights that people are born with, and include personal freedom, personal dignity, personal independence, and corresponding personal interests. Personal information, as an object of rights, has both personal attributes and property attributes. In fact, it is a kind of personality right that includes property rights [3]. In the Internet age, personal information is an important interest of human beings as a subject, and in essence, it also reflects the attributes of personality rights to a certain extent. It can also be seen from China's Personal Information Protection Law that individuals have the right to

control their personal information and exclude others from control and interference.

### **3. The Necessity of Administrative Law Protection of Personal Information in the Era of Big Data**

#### **3.1 The Actual Need to Protect Citizens' Personal Information**

Personal information not only contains the attributes of property interests, but also has the attributes of personal freedom and dignity. How to protect citizens' personal freedom and personal dignity depends on how to protect citizens' personal information. With the improvement of data technology, data storage capacity is also constantly improving. Therefore, in this era of rapid data evolution, how to protect personal information is also particularly important.

As big database technology evolves rapidly, it meets people's needs for a better life and greatly facilitates people's lives. However, this is accompanied by problems such as the abuse of personal information, illegal collection of personal information, and illegal sale of personal information, which have become a means for various illegal groups to gain profits. For example, on recruitment information websites, through the analysis of personal data, people are deceived to go abroad or their personal information is illegally stolen to carry out fraudulent criminal activities. The second type is accidental leakage, where the information in the database is stolen by others for some reason, resulting in the leakage of sensitive information and the infringement of personal information [4].

Moreover, this situation not only occurs between private entities, but also involves the leakage of personal information by public authorities. During the COVID-19 pandemic, it was a good thing for administrative agencies to coordinate people's activities during the pandemic through big data to play a role in controlling the spread of the epidemic. However, some local agencies have arbitrarily used the collection of personal information to impose illegal restrictions on citizens. These all need to be regulated through administrative law.

#### **3.2 The Need for Administrative Subjects to Administer According to Law**

The purpose of implementing administrative law protection for personal information is mainly to regulate the infringement of personal information by public power and to provide corresponding relief when personal information is infringed, or to regulate and punish the infringement of personal information. Administrative measures have certain coercive and deterrent power, and administrative measures can provide almost all-round protection for personal information in the form of pre-emptive prevention, in-process supervision, and post-event punishment.

The means of administration according to law are the basic requirements for implementing administrative actions. "What the law stipulates must be done, and what the law does not authorize cannot be done" is the best explanation of administrative organs' administration according to law. In the era of big data, personal information can be collected not only

by various companies, but also by administrative organs. When administrative organs collect citizens' personal information, they should collect it within the scope of legal authorization and in accordance with legal procedures. From a national level, the state will collect citizens' marital status, conduct a census and corresponding employment conditions to establish relevant data models to predict future development. For example, the recent real estate registration is likely to be a prerequisite for the implementation of property tax in the future. It can be seen that the state collects citizens' personal information for macroeconomic policies. Enterprises often collect personal information based on algorithm models to infer individual preferences and corresponding consumption habits, so as to push corresponding advertisements to obtain revenue.

In summary, personal information is transmitted from the national level to social enterprises and even between individuals. However, if there is a problem in any link, the risk of personal information being leaked will increase dramatically [5]. Although there is now a "Personal Information Protection Ordinance" to protect personal information, this protection is not enough to effectively protect personal information. Therefore, today we can still see various harassing calls and harassing text messages bombarding, and cases of fraud using personal information are common. Therefore, it is essential to improve and strengthen the protection of personal information by administrative law.

### **3.3 The Need to Enable the Free Flow and Sharing of Information**

The "Big Data Action Plan" to be implemented by the State Council in 2022 sets the construction of a data-strong country as the overall goal. To build a socialist data-strong country, the free flow and sharing of data information is indispensable. How to collect personal information, how to use personal information and how to protect personal information are particularly important, and the most fundamental of these is how to protect personal information. As a data resource, whether personal information can be freely circulated is crucial. If it is not protected accordingly, no subject will be willing to share their personal information, which will form a data island for everyone and even the entire society, which is not conducive to the country's strategic development [6]. Therefore, it is necessary to implement protection measures in every link of personal information processing and reduce obstacles to the free flow and sharing of data in the form of laws and regulations. In other words, only when there are effective administrative law protection measures for personal information will people be willing to freely circulate and share their personal information, thereby breaking the pattern of data islands and building a socialist data-strong country.

## **4. Problems in the Administrative Law Protection of Personal Information in the Era of Big Data**

my country's "Personal Information Protection Law" has been officially implemented since November 2021. On the one hand, it shows that my country attaches great importance to the protection of personal information. It also shows that in

the era of big data, personal information is being infringed. The serious situation urgently requires administrative agencies to take administrative measures to regulate and punish. However, although the "Personal Information Protection Law" is a regulation in the field of personal information, it is impossible to comprehensively protect personal information, especially the protection of personal information is still lacking in administrative law.

### **4.1 Administrative Supervision Responsibilities are Still Insufficient**

Although the issue of personal information protection has been improved since the introduction of the Personal Information Protection Law, it is still a temporary solution and has not achieved much results. People's personal information is still being illegally used in various ways, including the following issues:

First, traditional regulatory methods are incompatible with the development of the big data era. In the big data era, various industries rely on the Internet to develop, making the means of infringing people's personal information complex and diverse, and making it difficult for administrative agencies to conduct targeted supervision. At the same time, the industry field of the Internet is also rapidly updated and changing, and with the development of artificial intelligence, it has a very strong innovation ability. When various small programs and quick applications emerge in an endless stream, on the one hand, they facilitate and delight our lives, on the other hand, they also illegally collect personal information. The contradiction between the rapid development of the industry and the lag of the law has led to the problem of the timeliness of administrative supervision and increased the difficulty of administrative supervision [7].

It is not just the Internet and big data companies that are extensively involved in the Internet. Even traditional industries such as real estate companies have opened businesses online. The previous offline personal information collection has also been transformed into online collection, which has increased the difficulty of supervision by administrative agencies, making it difficult to track the process, and there are also difficulties in defining responsibilities. Not only the real estate industry, but also the financial industry has used the Internet to carry out online inclusive financial activities in recent years. When users cannot repay the corresponding debts, they blast users' contact lists or widely spread their information, resulting in many tragedies. These are the corresponding problems brought about by technological progress in the era of big data. If only traditional regulatory means are used, it will be difficult to track these illegal acts and define the corresponding responsibilities.

Secondly, the decentralized supervision. The Personal Information Protection Law stipulates that the Cyberspace Administration of China is in a position of overall coordination in handling personal information-related incidents, while other departments carry out their work within their respective management scope in accordance with relevant laws and regulations. On the one hand, it highlights the leading role of the Cyberspace Administration of China in

personal information protection work. On the other hand, the Cyberspace Administration of China formulates corresponding guidelines and rules in accordance with the Personal Information Protection Law, which solves the problem of personal information protection departments passing the buck or managing their own affairs in the past. However, there are also some problems, such as overall coordination. What degree of overall coordination can be called overall coordination? This is not stipulated in the law. Secondly, Article 60 stipulates that "the responsibilities of relevant departments shall be conferred by relevant laws and regulations." This leads to the dispersion of responsibilities to various departments, which may reduce administrative efficiency. In addition, the subjects and fields involved in personal information protection are very broad, or there are situations where the responsibilities of multiple departments overlap, or there are situations where the responsibilities are unclear, all of which will lead to insufficient supervision [8].

Finally, supervision is ineffective. Both the Personal Information Protection Law and the Data Security Law are national laws, which are relatively macro and their provisions are relatively abstract and principle-based. Therefore, in the face of the ever-changing industry development and rapid changes, for example, there will be differences in the protection of personal information by Internet companies and in the express delivery industry, which leads to insufficient administrative effectiveness of personal information protection.

#### **4.2 Imperfections of the Administrative Relief System**

If there is a right, there is a remedy. If there is no remedy, there is no right. If there is no effective remedy for a right, then the existence of the right will be meaningless. Generally speaking, civil, criminal, and administrative are the main remedies for citizens to effectively safeguard their rights. However, civil law regulates the legal relationship between equal subjects. If civil law is used to regulate, it will not be possible to regulate the behavior of administrative agencies infringing on personal information. Criminal remedies are a post-event remedy, and only when the subject of infringing personal information violates the behavioral norms stipulated in the criminal law will it be held responsible. In other words, if the actor does not commit an act that violates the criminal law, he does not need to be held responsible. If only criminal law is used to protect personal information, this will greatly limit the scope of personal information protection. Therefore, it is essential to take administrative law remedies to protect personal information.

In order to more directly compare the efficiency of civil, criminal and administrative remedies, the author searched the Judgment Documents Network with the keyword "personal information". From the search results, there were 43,812 criminal cases, 92,367 civil cases, and relatively few administrative cases, only 7,889. It can be seen that the main remedies for personal information are still civil and criminal.

Ultimately, it is because of the lack of administrative remedies in China regarding personal information protection. When administrative agencies infringe upon citizens' personal information, citizens often have three means of remedy:

administrative reconsideration, administrative litigation, and administrative compensation. First, in terms of administrative reconsideration, according to the Administrative Reconsideration Law currently in force in China, there is no provision for administrative reconsideration measures when administrative agencies infringe upon citizens' personal information. Second, in terms of administrative litigation, since citizens' information is stored in a huge database, when the personal information in the database is used, it is entered into another huge database. For the information subject, it is difficult to find the culprit who leaked the information. Even if citizens file a lawsuit, they do not know who to list as the defendant [9]. Finally, there are no relevant provisions for administrative compensation for acts of infringing personal information.

### **5. Thoughts on Improving Administrative Law Protection of Personal Information in the Era of Big Data**

#### **5.1 Strengthening the Construction of Administrative Supervision System**

In the era of big data, the protection of personal information involves multiple parties and multiple administrative departments. We must not only give full play to the value of personal information and build a socialist data country, but also fully protect the legitimate rights and interests of information rights holders. Therefore, we must integrate the power of the entire network supervision, strengthen the means of big data technology supervision, "arm" the supervision force with technology, and gradually adapt to the rapid development of society.

We must also strengthen the synergy of administrative agencies and improve the administrative linkage supervision mechanism. According to the provisions of the Personal Information Protection Law, the Cyberspace Administration of China should be a leading department and take the lead in coordinating with other administrative agencies to carry out supervision in accordance with the principle of administration according to law. Relevant departments can supervise different industries according to relevant laws and regulations. When cross-domain law enforcement occurs, the Cyberspace Administration of China will provide guidance and coordination to reduce conflicts between departments.

Finally, in the field of personal information protection, the power structure of regulatory authorities should be adjusted accordingly. On the one hand, the overlapping and blank areas of supervision should be readjusted according to the power of the departments. On the other hand, according to the principle of streamlining administration and delegating power, administrative agencies should focus on the implementation of regulatory effectiveness, with the scope of coverage and effectiveness as the foothold, and gradually delegate some power to third parties, so as to improve the effectiveness of supervision [10].

#### **5.2 Improving the Administrative Reconsideration System**

In the process of personal information collection and use, in

order to prevent citizens' personal information from being infringed by administrative agencies, the superior authorities of the administrative agencies should conduct information management supervision, and the administrative reconsideration agency is undoubtedly the best choice. It should impose corresponding penalties on the administrative agencies for inaction and active infringement when protecting personal information.

First, the scope of administrative reconsideration should be expanded. According to the current Administrative Reconsideration Law, the protection of personal information rights is not within the scope of administrative reconsideration, which obviously limits the means of redress for citizens' rights to personal information. Especially in the post-epidemic era, we should learn from the lessons of the administrative organs' abuse of citizens' personal information at that time, which caused serious consequences.

Secondly, improve the independence of administrative reconsideration. In my country's current reconsideration system, the reconsideration agency and the person who makes the specific administrative act are in a superior-subordinate relationship, so the reliability of administrative reconsideration is questionable. If the administrative reconsideration fails, citizens are likely to associate the relationship between the two and have a negative emotion. However, according to my country's current national conditions, it is not realistic to set up a separate administrative reconsideration agency, but it is possible to set up a separate review agency within the administrative agency to be responsible for the review of personal information cases.

## 6. Conclusion

In the era of big data, the value and importance of personal information are constantly increasing. Administrative agencies use our personal information in order to perform corresponding administrative functions efficiently and scientifically, while market entities use personal information in order to obtain high profits. However, both administrative agencies and market entities will infringe on citizens' personal information at some stage in the transmission and use of personal information. As the state public power agency that has the closest relationship with citizens' daily lives, administrative agencies should improve the way to protect citizens' personal information. Only in this way can we break the data island and maximize the value of data.

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