

Authors: Graham Sutton and Sarah Holsen
The Constitution Unit, University College London, UK

Title: China progresses information access and data protection laws

Volume 2 issue 2

The EU China Information Society Project is an initiative jointly funded by the European Union and the Chinese Government to promote economic and social reform in China through informatisation. Among other things, the Project aims to help China develop a regulatory infrastructure for the information society, including a legal framework on freedom of information and data protection, and to assist with the training of staff. This involves a two-way process, with experts from the EU working on short-term contracts in China alongside the small permanent staff based in Beijing, and Chinese officials visiting the EU to learn first-hand how things are managed here.

In June of this year we were invited by the Project to visit China as short-term experts to help with the work on freedom of information. Although we were well briefed in advance by the Project staff, it is fair to say that we did not really know what to expect. We were well aware of the struggle that had taken place in the UK before freedom of information became an operational reality. How much more difficult would it be in China? Two of our three formal commitments were traditional training seminars, for which we had been able to prepare presentations. But we had been told that no presentation was necessary for our first meeting, and we had no real understanding of what would be involved.

It turned out to be a workshop to discuss the draft of a national “regulation” (similar to a law, but passed directly by the State Council instead of the National People’s Congress) on “Access to Government Information” (as the FOI topic is usually referred to in China). It was presided over by Vice-Ministers from the two government offices most closely concerned with the preparation of the regulation – the State Council Legislative Affairs Office (SC-LAO) and the State Council Informatisation Office – with participation from senior officials and leading academics in the field. We were told that the workshop was part of the consultative process in the development of the law. We were invited to participate fully in the discussion, which was a great privilege, but difficult to carry out since the draft law was available only in Chinese. To follow the discussion we relied on one interpreter who translated all interventions throughout the day, both from Chinese into English and vice versa, (and, to her immense credit, never flagged). In practice, our role was limited to responding to questions about the position in the UK. The issues we were asked about included the fee regime, publication schemes, the need to protect internal government business, complaints about refusals to provide the information

requested, and the procedures for handling requests. Oh yes, and why did it take the UK five years to bring our law into force?

For our second meeting we travelled by train to Shijiazhuang, which is just south of Beijing and the capital of Hebei province. Our remit here was to give presentations about FOI in the UK and more generally in Europe (together with a colleague presenting about the German situation) at a seminar organised by the Hebei Informatisation Office. The day served as an introduction to the subject for local government staff from across the province. An interesting feature of the Chinese system is that laws and regulations, at least on matters of this kind, may be brought forward at both the national and local level. Hebei have it mind to legislate on freedom of information, and there was a great deal of interest in what we had to say.

Our final stop was Shanghai, which held a major surprise for us. Had we been told before going to China that China had an FOIA-like regulation in force before the UK we would probably have been rather sceptical. But the regulation containing Shanghai Municipal Provisions on Open Government Information was passed in January 2004 and brought into force in May of that year. We were told that other localities also have FOI provisions but it was not clear to what extent, if at all, the others are in force. In the light of their greater experience, it was with due humility, therefore, that we gave our presentations at a seminar for local government staff organised by the Shanghai Municipal Informatisation Commission.

Questions in both Shijiazhuang and Shanghai ranged very wide, but there was particular interest in the mechanisms for dealing with requests (where the questions suggested that the structure of government in China is very different from that in the UK) and the status and function of the Information Commissioner. Shanghai officials are clearly very proud of their city and its rapid development. They see FOI as being an essential complement to economic progress, since one of the reasons that they give for having an FOI regime is to help fight corruption. We were told by the Municipal government that about 95% of the local population are aware of the FOI regulation and that, by the time of our visit, there had been about 20,000 requests for information, mainly from private citizens.

In early September, about 10 Chinese officials, led by a senior member of the SC-LAO, came on a study visit to the EU under the auspices of the Project to see first hand how we manage FOI. They went first to Hungary and Germany, and then visited the UK, where the Constitution Unit organised a programme consisting of presentations at the Unit as well as visits to the ICO and National Archives. We were keen to give them the opportunity of hearing from a wide range of those involved with FOI - those who make requests, those who have to respond to them, academic commentators as well as those responsible for supervising the

legislation. We hope that the varied programme we laid on was both interesting and helpful. The only criticism we received was that it is a long way from London to Wilmslow!

Meanwhile, work continues in Beijing, not only on FOI but also on data protection (and a wide range of other topics related to Information Society). They are less well advanced in that field since they do yet have a draft law that they are willing to share with local experts. But one of the Project's activities is to help with the preparation and eventual implementation of a personal data protection law. In connection with that activity, I (Graham) was invited to return to Beijing in September. As well as speaking on data protection at the Project's annual conference, I took part in a workshop with academics and officials to discuss the key issues of concern in formulating a national data protection law, and a meeting with the Beijing Informatisation Office who are interested in bringing forward their own data protection law.

China is changing fast. Its economy is roaring ahead. It's encouraging that, with EU support, it is also working on the social measures that provide essential safeguards for its citizens as it races into the information age.

References

EU China Information Society Project <http://www.eu-china-infso.org/>