

On the Realistic Dilemma and Improvement Path of Local Government Data Openness in China

Haoran Xu*

School of Law, Jiangsu University, Zhenjiang, Jiangsu 212013, China

*348804848@qq.com

Abstract

As a type of data, government data plays an important role in promoting local economic development and enhancing the government's service and governance capabilities. However, China's current government data open system cannot meet the demand for data openness under the development of the digital economy and the increasing needs of the growing society for production, life, and development. Although China has established a certain government information disclosure system, there are still some deficiencies in further constructing and improving China's data governance, promoting the development of the digital economy, and promoting digital ecological construction. On the one hand, the data openness system construction of local governments is polarized, with some regions taking the lead in institutional construction through local legislation, while other regions still have an imperfect government data openness system. On the other hand, the government data openness system in China still lags behind that of the United Kingdom and the United States, and the government information disclosure system, which focuses on the right to know, cannot effectively undertake the new government data openness system. To address these issues, effective legislative measures should be taken to regulate the objects, targets, and scope of government data openness, and to improve the system construction of government data openness in local governments in China.

Keywords

Government Data; Open Government Data; Legal System Construction; Top-level Design.

1. Introduction

The original purpose of China's open data movement was to better utilize public data resources and leverage information technology to improve the quality and level of public services. In the era of the digital economy, data has become a new factor of production and an essential production material in contemporary economic and social life. Only by opening up and sharing data, that is, circulation, can the value of data and the vitality of the digital economy be stimulated to produce economic benefits. Currently, although some local governments have issued regulations or policies on public data sharing and openness, there is no consensus on the theoretical basis for data openness, leading to unclear legal positioning of public data, incomplete governance systems and institutional design, and vague practice guidelines. Based on the analysis of the dilemma of local government data openness in China, this paper attempts to construct a corresponding improvement path to promote the systematic construction of the public data openness system.

2. The Legislative Status of Local Government Data Disclosure in China

China's first law on data security, the "Data Security Law of the People's Republic of China" officially came into effect on September 1, 2021. Data, as a new and independent object of protection, has been recognized in legislation. This law provides legal guidance for safeguarding data security, regulating data processing, protecting the rights and interests of data users, and maintaining national security. As an important legislative achievement, it stipulates government data openness at the national legal level for the first time, clarifying the principles of "fairness, impartiality, and convenience" and the requirements of "timeliness and accuracy" for openness. It creates a legal basis for government data openness and provides a system guideline for local legislation, thereby enabling China's local government data openness practices to emerge from the dilemma of "lack of legal basis."

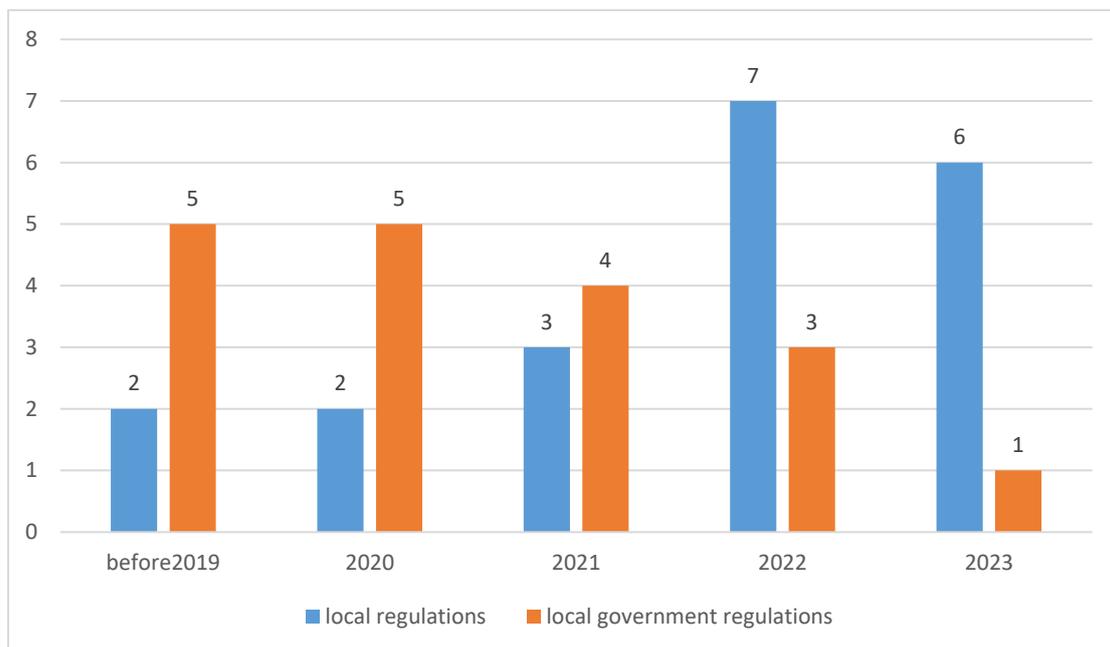


Fig 1. Statistical Chart of Local Legislation Quantity

Through searching all "local regulations" in China's legal search engine with the keyword "data openness", the author found 73 local regulations, 45 local government rules, and 1330 local normative documents. After four rounds of exclusion: ① excluding normative documents; ② excluding duplicated or invalidated documents; ③ excluding documents with only slogans and no specific framework design; ④ excluding documents that only address a small aspect of the government's openness system. Finally, a total of 38 samples that meet the above conditions were obtained. Through analyzing the names, implementation time, and specific contents of the above samples, the overall development of China's local government data openness legislation is shown to some extent.

Based on the graph, it can be seen that before the promulgation of the Data Security Law, some regions had already enacted local legislation on government data opening under the guidance of central policies. Compared with data opening practice, local government data opening legislation started later but showed a stable growth trend overall. As shown in the graph, the number of government regulations has decreased year by year, while the number of local regulations has increased. It can be seen that more and more local governments have elevated government data opening to local regulations after practicing government regulations. As of April 2023, the number of local regulations to be implemented in 2023 is almost catching up with the number of local regulations implemented in 2022. In terms of spatial distribution, local legislation covers 22 provincial-level administrative regions, mainly distributed in the eastern and southern regions of

China, most of which are economically developed provinces and cities. All four municipalities directly under the central government have also implemented relevant legislation. From separately formulating regulatory documents for government data to incorporating them into one chapter of comprehensive local regulations on data opening, it has become a trend in China's local government data opening legislation. [1]

3. Analysis of the Dilemma of Chinese Local Government Data Openness

At present, the Chinese Data Security Law focuses on regulating data security, embodying the overall requirement of "standardization, unification, security, and controllability." Specific operational procedures and openness requirements need to be reflected through local legislation. However, due to limitations in legislative authority and resources, there are many difficulties faced by local governments in China with regards to data openness. [2]

3.1 The Legislative Dilemma of Local Government Data Openness

Although China's Legislation Law grants prefecture-level cities the power to enact local legislation, there are clear limits to their legislative authority. Due to legislative restrictions in the field of data openness, it is difficult for local governments to directly define public data unless authorized for pilot programs. Currently, many cities have enacted local legislation on data rights, processing, and openness. However, overall, the sharing of government data remains under the influence of the government information disclosure system. The openness of government data is only distinguished based on personal privacy and commercial secrets. More research and discussion on the openness of government data is needed in current local legislation.

3.2 The Sharing Dilemma of Local Government Data Openness

Currently, there are insufficient, uncoordinated, unbalanced, and unsustainable issues in the opening of public data in China. Firstly, the demand for open data from the market and society has not been fully satisfied, resulting in issues such as insufficient number of open data, low capacity, coarse granularity, and low quality. Real-time dynamic, high-granularity, and high-capacity data sets are rarely open, and the open public data sets beyond the government department's data are also insufficient. Secondly, there is a lack of linkage and coordination among data open works in different regions, and there is insufficient cross-level and cross-regional connectivity between local platforms. There are also significant differences in the content and standards of the data opened in various regions, and there is a considerable imbalance in the number of open platforms, open data sets, capacity, and types among different regions.

3.3 The Developmental Dilemma of Local Government Data Openness

In the current situation, the data opening work in various regions focuses more on the goal of developing the digital economy and serving large and medium-sized state-owned enterprises, while not giving equal attention to its role in promoting the development of the digital society for all social and economic entities. Some places hold a cautious or even negative attitude towards opening government data, mainly due to the unclear legal status of public data, the high cost of opening government data, and concerns about uncertain risks such as data and content misuse and violation of privacy rights. In addition, the cities with relatively developed economies in the eastern region provide government data opening services and other measures to support innovation, entrepreneurship, and promote high-quality economic development, leading to the inability to achieve regional balance in the allocation of related technological and information resources, and the gap in data opening fairness becoming increasingly apparent.

4. The Improvement Path of Local Government Data Openness in China

The breakthrough of the predicament in China's local government data openness lies in the establishment of a sound open path. The author believes that emphasis should be placed on the

research and practical exploration of the framework content of data openness, the regulatory system for data openness, and local legislation on data openness.

4.1 Building a Comprehensive Framework Structure for Open Government Data in China

The opening of local government data in China should be based on comprehensive openness and proactive disclosure, with the aim of achieving comprehensive sharing of main data collection, storage, platform construction, and management.

(1) The principle of fairness is the fundamental premise for local government data openness

Achieving comprehensive and non-discriminatory application of public data, preventing data aggregation and modification, ensuring timely use and accessibility of data, machine processability, non-discrimination and non-proprietary nature of data, and exempting users from licensing within the legal use scope are the necessary requirements for fair and open data access. [3]

(2) The data catalog is the fundamental object of local government data openness

Article 42 of China's Data Security Law stipulates that the state shall establish a directory of government data for public release, build a unified, standardized, interconnected, secure, and controllable government data release platform, promote the use of government data, and provide a basic basis for local government data release. Currently, local legislation in China generally adopts a management system for data directories, which regulates the government data released through the compilation of public data resource directories. However, there is still considerable room for improvement in terms of authorizing development, providing and managing the data to the society through the government, especially in ensuring the protection of public interests.

(3) The high-value data is the fundamental goal of local government data openness

The "Action Plan for Promoting the Development of Big Data" and "The 14th Five-Year Plan for National Economic and Social Development and Long-Term Goals for 2035" in China have all made provisions for the priority opening of government data. In the context of local government data opening in China, priority should be given to the opening of high-value data sets, while introducing the concept of data collaborative governance to alleviate the pressure on administrative agencies. This will enable government data opening to be more targeted and effective, allowing the public and enterprises to better utilize data resources and avoid government data opening falling into the quagmire of formalism. [4]

(4) The security of data is a fundamental requirement for local government data openness

Avoiding the use of technical means to break through data security settings is a basic requirement for local government data openness. For example, due to the existence of the Personal Information Protection Law, when the government uses personal information, it often bypasses the protection of the law through de-identification operations. However, this brings two problems. One is that de-identified data still has the possibility of being reverse-engineered, and the other is that the value of de-identified data is greatly lost. On this issue, some local governments have conducted effective practical explorations, and their experience is worth learning from. For example, the "Interim Measures for the Management of Public Data Opening and Security in Zhejiang Province" stipulates that public data related to personal information can only be included in the limited opening scope with the explicit consent of the information subject, thus fundamentally obtaining the right to dispose of personal information. [5]

4.2 Strengthening the Regulatory System for Local Government Data Openness in China

The inertia of local government behavior can easily push the economic logic of data openness to an excessive degree. In order to prevent the abuse of power in local government data openness, it is necessary to establish a sound regulatory system based on legal boundaries. [6]

(1) Implementing responsibility regulatory measures for local government data openness

"The Notice of the General Office of the State Council on the Issuance of the Guiding Opinions on the Development of Government Websites" clearly states that the State Council and local

governments at all levels are the main bodies responsible for network supervision. However, in practice, there are differences in the administrative departments responsible for local governments, and the responsibility for supervision is unclear, leading to the "in name only" of regulatory responsibilities, mutual shirking of responsibilities, and unclear accountability. Only by effectively implementing the regulatory responsibility of local government data openness can specific measures such as user complaint handling mechanisms, emergency plan implementation, performance evaluation, and sampling inspections be implemented effectively.

(2) Innovative operation and supervision mode for local government data openness

The operating and regulatory mode of local government data openness is directly related to the operational quality and actual effect of data security, data transmission, and data sharing. The government data regulatory mechanism of the European Union is worth learning from, which implements a "two-level regulation" model by government data operating agencies and big data centers (big data bureaus). The former mainly verifies the identity of government data users, signs data service agreements, regulates and standardizes the data usage behavior of all participating parties, and summarizes the entire data model to ensure the security of parameters in the transmission model. The latter focuses on supervisory activities carried out based on the government data authorization operation system, verifying and reviewing the working conditions and government data usage status of government data operating agencies, identifying defects and risk hazards in their work, and carrying out full-process management before, during, and after their work.

(3) Establishment of remedial regulatory system for local government data openness

With the widespread application of "data +" technology, network infringement incidents occur frequently in social life, and the government's regulatory platform is often involved in litigation. In practice, when an administrative agency infringes upon the interests of the rights holder, they may choose remedies such as administrative reconsideration and administrative litigation. However, data-related issues typically require strong professional skills, and the review body or judge may have difficulty providing a clear judgment. Therefore, targeted measures are needed to address the special nature of data-related issues. It is necessary to establish a local government data open relief regulatory system.

4.3 Improving the Legislative System for Local Government Data Openness in China

Currently, there is a lack of systematic regulatory guidelines for local legislation on data openness by Chinese local governments. In general, most localities rely on government normative documents to strengthen data openness management, resulting in a "disorderly" phenomenon of "multiple rules from different sources". Although this phenomenon has been improved in recent years, it still lacks basic legislative compliance. A legislative framework that regulates local government data openness is essential for addressing this issue. [7]

(1) Improving Legal Interpretation Scheme

In order to provide a clear legal basis for government data opening and reuse, as well as to promote local data opening legislative pilot work, a legal interpretation scheme should be improved based on the current laws and regulations, with reference to Article 1 of the Regulations on Government Information Disclosure and relevant policies of the State Council. The advantage of this scheme is to turn static legal rules into dynamic practical applications to solve the problem of "political declaration is more than actual operability."

(2) Strengthening specialized legislation for data

To establish a data opening system for Chinese local governments, a series of single-line laws such as the "Government Data Opening Law" should be formulated. The advantage of this plan is to establish a legitimacy basis for local government data opening, and to solve the problem of the absence of "superior laws" in Chinese local legislation.

(3) Promoting the Combination of Legal Interpretation and Specialized Legislation in China's Local Government Data Opening

Leveraging the implementation of China's Data Security Law, a thorough exploration and clarification of the connotation, model, and exceptions of government data openness should be conducted to provide a basis for the formal legislation of the Government Data Openness Law. The specialized legislation on government data openness should revolve around the definition and scope of government data, the obligation subject of data openness, data openness exceptions, organizational structures and related institutional guarantees, as well as unified data openness platforms. It not only provides legal compliance for the public to develop and utilize government data but also establishes a "higher-level law" foundation for local legislation. Combining legal interpretation and specialized legislation can further clarify the scope, standards, types, and procedures of local government data openness, bringing openness, individual privacy protection, and commercial utilization under the rule of law.

5. Conclusion

The openness of local government data in China is a systematic openness and should be further strengthened through top-level design. The design of the system should include confirming the "national strategy for big data" through laws, regulations, rules or policies, providing a legal basis for local governments in China to obtain, process, transmit, use and secure data in an all-round way, and showcasing China's information advantages and data capabilities. At the same time, the design of the system should be based on comprehensive openness, with proactive openness as the focus, covering the overall requirements of local government data openness, data collection, storage and platform construction management, as well as data sharing and protection of citizens' rights.

The openness of local government data in China should further strengthen the construction of the data network operation system, increase the quantity and quality of high-value data applications, expand the lifecycle of data platforms and make them sustainable. Special legislation for local government data openness should be promoted, local legislative pilot programs should be attempted, and a standard system for local legislation should be established, so as to incorporate the ecosystem of local government data openness into a fully-structured framework system, in order to safeguard the legitimate rights and interests of all relevant parties, including developers, and to build a solid legal foundation for data application practices.

The openness of local government data in China should further build a risk assessment mechanism for data platform operation, promote and ensure the release of high-value data application dividends. The risk prevention of local government data platforms should focus on the improvement and supervision of data development, technology, management, and legal governance, and establish a sound system of pre-filing, mid-term sampling, and post-evaluation, to construct a risk prevention mechanism that combines risk prediction, risk detection, and risk assessment for local government data openness.

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