

**LI Jianxiong**

**v.**

**Department of Transport of Guangdong Province,  
A Case About Open Government Information**

Guiding Case No. 26

(Discussed and Passed by the Adjudication Committee of the Supreme People's Court  
Released on January 26, 2014)

**CHINA GUIDING CASES PROJECT**

**English Guiding Case (EGC26)**

**March 12, 2014 (Express Edition)\***

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The following Guiding Case was discussed and passed by the Adjudication Committee of the Supreme People's Court of the People's Republic of China and was released on January 26, 2014, available at <http://www.chinacourt.org/article/detail/2014/01/id/1209342.shtml>. See also 最高人民法院关于发布第六批指导性案例的通知 (*The Supreme People's Court's Notice Concerning the Release of the Sixth Batch of Guiding Cases*), Jan. 26, 2014, available at [http://rmfyb.chinacourt.org/paper/images/2014-01/29/03/2014012903\\_pdf](http://rmfyb.chinacourt.org/paper/images/2014-01/29/03/2014012903_pdf).

## Keywords

Administrative      Open Government Information      Online Application  
Late Reply

## Main Points of the Adjudication

Where a citizen or a legal person or other organization submits an application for the disclosure of government information to an administrative organ through a governmental public network system, if the network system does not state otherwise, the date on which the system confirms the successful submission of the application should be regarded as the date on which the administrative organ receives the application for the disclosure of government information. The administrative organ's internal processing procedure for the application cannot be a ground for [justifying] the administrative organ's deferred processing [of the application]. [The resulting] delay in issuing a reply should be recognized as a violation of law.

## Related Legal Rule(s)

Article 24 of the *Regulation on Open Government Information of the People's Republic of China*

## Basic Facts of the Case

Plaintiff LI Jianxiong (李健雄) claimed: on June 1, 2011, he submitted an application for the disclosure of government information to defendant Department of Transport of Guangdong Province (广东省交通运输厅)<sup>1</sup> through the public network system of the People's Government of Guangdong Province. According to Article 24, Paragraph 2 of the *Regulation on Open Government Information of the People's Republic of China* (hereinafter referred to as the "*Regulation on Open Government Information*"), the defendant should have replied to the plaintiff by the 23<sup>rd</sup> of that month. The defendant, however, failed to reply or provide the government information [that the plaintiff] applied for within the time limit prescribed by law, and thus [the plaintiff] requested that the court rule to confirm that the defendant's act of failing to reply within the time limit prescribed by law was a violation of law.

Defendant Department of Transport of Guangdong Province defended its position, claiming: [the channel] through which the plaintiff applied for the disclosure of government information was the public network system of the People's Government of Guangdong Province,

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<sup>1</sup> Translators' note: the term "广东省交通运输厅" is translated here as "Department of Transport of Guangdong Province" in accordance with the translation used in the department's English announcements. See e.g., Department of Transport of Guangdong Province, *Request for Expression of Interest (REOI) for Commercial and Technology Agent Service Contract for GEF Grant Guangdong Green Freight Demonstration Project*, available at [http://www.gcd.gov.cn/gkzb/20110315145102567\\_1.shtml](http://www.gcd.gov.cn/gkzb/20110315145102567_1.shtml).

the government affairs extranet of the provincial government (hereinafter referred to as the “provincial extranet”), rather than the defendant’s internal local area network (hereinafter referred to as the “departmental intranet”). The defendant, in accordance with provisions,<sup>2</sup> installed on [its] departmental intranet the background process of the “online system for the disclosure of government information by application” of the People’s Government of Guangdong Province. As the defendant’s departmental intranet is physically isolated from the Internet and the provincial extranet, data on the Internet and on the provincial extranet cannot directly enter the departmental intranet for processing, [but] must go through GAP<sup>3</sup> by a data “ferrying” method to access the departmental intranet for processing. Consequently, the defendant’s staff could not promptly detect the plaintiff’s application, [which was] submitted through the public network system of the People’s Government of Guangdong Province, resulting in the defendant’s failure to accept the application in a timely manner.

[The defendant further claimed that] according to various provisions, including Article 24 of the *Regulation on Open Government Information* and the *General Office of the State Council’s Notice Concerning Making Good Preparations for the Implementation of the “Regulation on Open Government Information of the People’s Republic of China”*, the acceptance of an application for the disclosure of government information should not be based on [the time at which] an applicant submits his application, but on [the time at which] the administrative organ receives the application. The plaintiff claimed that he applied to the defendant for the disclosure of government information on June 1, 2011, but the defendant did not receive the application [at that time]. The date on which the defendant formally received [the application] and confirmed [its] acceptance was July 28, and [the defendant], in accordance with provisions,<sup>4</sup> sent an *Acceptance Notice* to the plaintiff. On August 4, the defendant served the *Reply Concerning Open Government Information* and the *Written Reply on Open Government Information* on the spot to the plaintiff.<sup>5</sup> [The defendant did so] merely five business days [after] the date of acceptance, and [thus] did not exceed the legally-prescribed time limit for replying. Because [the defendant’s] failure to promptly detect and accept the application that the plaintiff submitted through the government’s public network system should be regarded as having been caused by force majeure and objective reasons,<sup>6</sup> [the delay in the defendant’s reply] should not count towards the time limit for replying, and [the defendant] thus requested that the court reject the

<sup>2</sup> Translators’ note: the court does not specify which provisions this phrase, “按规定” (“in accordance with provisions”), refers to.

<sup>3</sup> Translators’ note: GAP is derived from “air gap”, which is a network security measure to ensure that a secure computer network is physically isolated from unsecure networks. See Air Gap (networking), WIKIPEDIA, available at [http://en.wikipedia.org/wiki/Air\\_gap\\_\(networking\)](http://en.wikipedia.org/wiki/Air_gap_(networking)); see also <http://www.topwalk.com/news.php?id=95>.

<sup>4</sup> Translators’ note: the court does not specify which provisions this phrase, “按规定” (“in accordance with provisions”), refers to.

<sup>5</sup> Translators’ note: the term “当场” (“on the spot”) is used, suggesting that the plaintiff was present. It is not clear whether the defendant requested the plaintiff to attend a meeting to receive the documents. In addition, the court does not explain the difference between “《关于政府信息公开的答复》” (“*Reply Concerning Open Government Information*”) and “《政府信息公开答复书》” (“*Written Reply on Open Government Information*”).

<sup>6</sup> Translators’ note: the term “不可抗力” (“force majeure”) is more commonly used in contracts—the reference might simply be to “superior source”—and it is not clear what “客观原因” (“objective reasons”) refers to.

plaintiff's litigation claim in accordance with law.

The court handled the case and ascertained: on June 1, 2011, plaintiff LI Jianxiong submitted an application for the disclosure of government information to defendant Department of Transport of Guangdong Province through the public network system of the People's Government of Guangdong Province. [The plaintiff] applied to obtain the passenger kilometers from Guangyuan Bus Station in Guangzhou to Fogang [Bus Station], etc. The government's public network system used application number 11060100011 to confirm [the application], and communicated to the plaintiff, by text message, a confirmation of the successful submission of the application for the disclosure of government information. On July 28, the defendant made a record of the [application's] acceptance and confirmed the aforementioned facts, and, on August 4, served the *Reply Concerning Open Government Information* and the *Written Reply on Open Government Information* on the plaintiff. During the trial, the defendant confirmed that the plaintiff [had applied to] obtain the aforementioned information based on needs arising from [his] life and production,<sup>7</sup> and the plaintiff confirmed that, on August 4, [he] had received the *Reply Concerning Open Government Information* and the *Written Reply on Open Government Information* issued by the defendant.

### Results of the Adjudication

On August 24, 2011, the Yuexiu District People's Court of Guangzhou Municipality rendered the (2011) Yue Fa Xing Chu Zi No. 252 Administrative Judgment: [the court] confirms that defendant Department of Transport of Guangdong Province's failure to reply to plaintiff LI Jianxiong's June 1, 2011 application for the disclosure of the passenger kilometers from Guangyuan Bus Station in Guangzhou to Fogang [Bus Station] in accordance with the time limit prescribed by Article 24 of the *Regulation on Open Government Information* was a violation of law.

### Reasons for the Adjudication

In the effective judgment, the court opined: Article 24 of the *Regulation on Open Government Information* provides:

When an administrative organ receives an application for the disclosure of government information, if it can reply on the spot, [the administrative organ]

<sup>7</sup> Translators' note: Article 14 of the *General Office of the State Council's Opinion on Several Questions Concerning the Implementation of the "Regulation on Open Government Information"* provides, "if an applicant applies to disclose government information that bears no relation to that applicant's production, life, scientific research, or other special needs, the administrative organ may refuse to provide [the information]" ("行政机关对申请人申请公开与本人生产、生活、科研等特殊需要无关的政府信息, 可以不予提供"). See 国务院办公厅关于施行《中华人民共和国政府信息公开条例》若干问题意见 (*General Office of the State Council's Opinion on Several Questions Concerning the Implementation of the "Regulation on Open Government Information"*), promulgated on and effective as of Apr. 29, 2008, available at [http://www.gov.cn/zwgc/2008-04/30/content\\_958477.htm](http://www.gov.cn/zwgc/2008-04/30/content_958477.htm).

should reply on the spot. When an administrative organ cannot reply on the spot, it should reply within 15 business days of receiving the application. If it is necessary to extend the time limit for replying, [the administrative organ] should [secure the] agreement of the person in charge of the organ [responsible for] government information disclosure work, and should inform the applicant. The maximum extension of the time limit for replying must not exceed 15 business days.

On June 1, 2011, the plaintiff in this case submitted an application for the disclosure of government information to the defendant through the public network system of the People's Government of Guangdong Province. He applied for the disclosure of the passenger kilometers from Guangyuan Bus Station in Guangzhou to Fogang [Bus Station]. The government's public network system generated a corresponding electronic application number and sent a text message to the plaintiff's mobile phone [confirming] the successful submission of the application. The defendant confirmed receipt of the aforementioned application and recognized that the plaintiff [applied to] obtain the aforementioned information based on needs arising from [his] life and production. [The defendant], however, issued to the plaintiff the *Reply Concerning Open Government Information* and the *Written Reply on Open Government Information* on August 4, 2011, which exceeded the time limit for replying as prescribed by the aforementioned provision.

Since the People's Government of Guangdong Province's "online system for the disclosure of government information by application" should, as an application platform for the disclosure of government information, be integrated and authoritative, if [the network system] does not state otherwise, the successful submission of an application through that platform should be regarded as the relevant administrative organ's receipt of the application for the disclosure of government information submitted by the plaintiff through the Internet. As for the transfer of the application between the extranet and the intranet and between the upper- and lower-level administrative organs, this is a type of internal management matter of administrative organs, and cannot be a ground [for justifying] an administrative organ's late processing [of an application]. The defendant claimed that because the plaintiff submitted the application through the government's public network system and [the defendant] could not, due to the physical isolation of its departmental intranet from the Internet and the provincial extranet, promptly detect the plaintiff's application, the date of receipt of the application should be July 28, 2011, when [the defendant] detected the plaintiff's application, and [thus the defendant] did not exceed the time limit for replying. This claim could not stand. Consequently, where a plaintiff submits an application for the disclosure of government information through a government's public network system, the date on which this network system confirms the successful submission of the application should be regarded as the date on which the defendant receives the application. The defendant's delay in issuing a reply should be recognized as a violation of law.