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‘New Chinese Laws and Specifications under Covid-19’

In May 2020, China’s National People’s Congress passed the PRC Civil Code, which introduced new provisions to protect privacy and personal information. About the same time, the new Information Security Technology – Personal Information Security Specification (GB/T 35273-2020; the Specification) was also introduced. When they come into effect on 1 January 2021, both laws will become the foundation for personal information protection in China, where interest in these rights has increased.

Now that more information is being collected and used for the keeping of public safety during the Covid-19 pandemic, the question of how to protect citizens from abuse is also important. The Civil Code and the Specification will provide a new, clearer and more comprehensive structure for such protections. But how will they actually function during the pandemic?

Exemptions

But the new law also makes exemptions. In exceptional cases the processing of personal information is not based on the relevant person’s authorisation, but the “law and administrative regulation” (Article 1035(1) Civil Code). Article 12 of the PRC Law on Prevention and Treatment of Infectious Diseases, for instance, specifically grants medical institutions and disease control and prevention agencies the power to collect information relating to infectious disease investigation, testing, sampling and treatment. Now during the pandemic, Covid-19 has been categorized as a Class-B Infectious Disease. Therefore, the right to personal information privacy may have to, to some extent, give way to public need.

Yet our understanding is that such collection and use of information must still be carried out within the legal framework. The Civil Code now imposes obligations of information protection on the information collector. This includes non-disclosure of collected personal information, the prevention of information loss and damage (including positive actions for the prevention of such loss) and informing the party when such loss or damage occurs (Article 1038). Natural persons may also review or copy their personal information and request corrections if any error occurs (Article 1037).

The Specification provides further control measures, such as internal access approval processes, minimum access control mechanisms, encryption and other security measures. Such obligations are borne by all information collectors, including those whose permission is granted by law rather than consent.

Medical institutions and disease control bodies therefore must take necessary measures and meet requirements of the Specification. The use of any collected information must also be confined to the purpose of the collection. Thus, information gathered during the pandemic should only be used for public health purposes and not to be abused by medical institutions.

A foundation for the future

Together, the Civil Code and the Specification provide a comprehensive extension to information

protection methods and processes. Nevertheless, one difficulty remains; namely, defining the precise scope of what information can be collected, especially during rare public health crises, like Covid-19. Information collection without the person's permission is granted, but it should not mean any information can be collected. The Civil Code stated that the information processing must follow the principles of "legality, legitimacy and necessity". The Specification, meanwhile, provides standards on information collection and gives examples of "personal sensitive information" in Schedule B (including medical information such as medical examination reports, medical history and medication records).

Yet, there still appears to be Variations in how data has been collected. During Covid-19 there have been instances where information collection has been wide in scope and sometimes persons have even been asked to provide information relating to relatives' and close associates' private information. A clearer definition mechanism is therefore necessary. The Civil Code sets down a basic framework for the recognition and protection of private information as a personal right. The Specification is a national standard setting out the safety requirements for the collection, storage and use of such information. A more detailed and separate privacy and information protection law may be required for the comprehensive protection of these basic rights.

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