

# Research on Privacy and Personal Information Protection from the Perspective of Civil Code

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## Abstract

The personality rights section of the Civil Code stipulates the protection of privacy and personal information rights. However, further clarification is needed on how to correctly understand and apply relevant provisions. Correspondingly, the distinction between privacy rights and personal information rights should be clearly defined. With the implementation of the Personal Information Protection Law, new challenges have arisen in the protection of personal information. Faced with the issues of determining the privacy of personal information, handling sensitive and private information, and insufficient protection of general personal information, it is necessary to ensure the realization of privacy and personal information rights by concretizing privacy into control, handling sensitive and private information comprehensively on a case by case basis, and clarifying the protection of general personal information.

## Keywords

Civil Code; privacy rights; personal information protection.

## 1. The Boundary between Privacy Rights and Personal Information Rights

The concept of privacy originated in the United States, the birthplace of the Internet, and was put forward by American scholars as early as the end of the 19th century. Personal information protection emerged in the legal community of Europe in the 1960s and 1970s, mainly to address the issue of information leakage brought about by the big data era, and is a new type of legal right. Before the promulgation of the Civil Code, Chinese law and academia had already begun to tend to protect the two as different rights and interests, especially the "Xu Yuyu case" in August 2016, which further promoted the inclusion of personal information protection in the General Principles of Civil Law for the first time. Although the Civil Code places the two in the same chapter, it provides separate provisions for them, indicating that legislators believe there is a difference between the two and therefore should clearly distinguish them. The main differences lie in the following four aspects:

Firstly, in terms of the nature of rights, the right to privacy, as a legal personality right, is an absolute right, as well as a right of domination and exclusivity, with only personal attributes and not property attributes. However, unlike this, the academic community generally believes that personal information rights not only have the attributes of personal interests, but also the attributes of property interests, belonging to a comprehensive right. Therefore, the Civil Code does not treat personal information as a specific personality right and uses the term "personal information right".

Secondly, in terms of the content of rights, the right to privacy mainly lies in maintaining the peace of personal life of natural persons, preventing infringement of private space, preventing disturbance of private activities, and preventing disclosure of private information. It has a passive and passive defensive nature, that is, it can only be claimed when the right to privacy is violated. And personal information rights are the control and decision-making power over

personal information. In addition to passive defense, they can also actively and autonomously control and utilize it.

Thirdly, in terms of protection, Article 1033 of the Civil Code requires "unless otherwise provided by law or with the explicit consent of the right holder" when providing for exemption reasons for privacy infringement, while Article 1038 expresses "without the consent of a natural person" when defining the information security obligations and exemption reasons of personal information processors. Professor Wang Liming believes that this is the result of repeated research by legislators, indicating that the disclosure, collection, and use of private information can only be carried out with the explicit consent of the rights holder, while personal information can be disclosed with implicit or general consent.

Fourthly, in terms of rights remedies, privacy rights, as a negative defensive right, often use post remedy methods, such as requesting cessation of infringement, elimination of obstruction, compensation for losses, etc. The remedies for infringement of personal information rights also include pre prevention, requesting updates and corrections, etc. At the same time, in terms of providing evidence, the remedy for infringement of privacy rights only needs to prove that the perpetrator has committed illegal acts and cannot determine the grounds for exemption, while infringement of personal information rights usually requires proof of the existence of actual damage.

## **2. The Problems of Privacy Rights and Personal Information Protection from the Perspective of Civil Code**

### **2.1. In Terms of Determining the Privacy of Personal Information**

According to Article 1034 of the Civil Code, the protection of private information should prioritize the application of privacy rights. This makes it necessary to first discuss whether personal information is classified as private information in specific judicial practice, in order to determine the applicable rules, that is, to protect from the perspective of specific personality rights or personal information rights. However, there is currently no unified and clear standard for identifying personal confidential information. There are mainly two identification methods in practice. The first approach is to use the general public's understanding and the reasonable expectations of natural persons as the criteria for recognition. This method is relatively convenient to use, but the privacy expectations of natural persons vary in intensity. Simply solidifying this information in a general way cannot achieve the best protection of rights and interests. It is necessary to explore whether there is privacy infringement based on specific scenarios. The second method is to distinguish the criteria for determining privacy, which can be divided into two parts: basic private life tranquility and unwillingness for others to know. The criteria for judging the former are relatively clear, that is, comparing whether their personal life tranquility has been affected and caused intrusion; The judgment on the latter has not yet reached a consensus, as "not wanting others to know" itself is too subjective and should be judged based on whether private information has been violated. These viewpoints also reflect that there are many factors that need to be considered in the process of determining the privacy of personal information, making it difficult to achieve specific identification standards. The difficulty in determining the privacy of personal information increases the difficulty of improving the personal information protection system. In addition, according to the above judgment methods, there may be differences in the understanding of general social cognition due to regional, ethnic, and other differences. When there is already a conflict in general social cognition, how should we consider the reasonable privacy expectations of natural persons? At the same time, privacy expectations also include positive utilization and negative defense, and how to correctly grasp the judgment criteria of the two has become a challenge.

## 2.2. In Terms of Handling Private and Sensitive Information

Regarding personal information, the Civil Code proposes the category of private information and sets corresponding legal application rules for it. The Personal Information Protection Law proposes the category of sensitive personal information and clarifies its connotation. How to correctly grasp the relationship between private and sensitive information? There are two main viewpoints in the theoretical community regarding this. One viewpoint holds that, fundamentally speaking, there is no difference between private information and sensitive information. Both have high privacy characteristics, that is, in personal information, they belong to the part of personal privacy and are the core area. This viewpoint also advocates for increased protection of sensitive personal privacy information, which is the intersection of the two. The second viewpoint holds that private information and sensitive information are not completely consistent. Although they are different from general personal information, from the perspective of classification methods, private and sensitive information are conclusions drawn from different perspectives. Therefore, there is a crossover between the two, not a complete overlap. Private information mainly involves the consideration of whether the infringement of information affects personal life, while sensitive information is judged from an objective perspective, that is, the potential harmful consequences of the infringement of information.

It is worth noting that there is not only a conceptual difference between private information and sensitive information, but also a dilemma at the specific legal application level, that is, how to choose and apply rules when information belongs to the intersection of the two. The relationship between general personal information, private information, and sensitive information still needs to be clarified.

## 2.3. Protection of General Personal Information

Currently, although "personal information rights" are not explicitly mentioned in the law, the protection of "personal information rights" is explicitly stipulated by the law. From the relevant provisions of the Civil Code and the Personal Information Protection Law, it can be seen that the protection intensity and intensity of privacy rights, as well as private and sensitive information, are relatively high. Compared to others, general personal information shows a trend of insufficient protection. Scholars have pointed out that the determination of responsibility for infringement of personal information rights varies among different individuals. Firstly, in terms of subjective elements, the determination of infringement of private information is naturally based on general infringement rules. However, if this rule is still applied to general personal information, there may be a problem of too broad protection interests, which violates the private law nature of civil law and excessively affects the freedom of behavior of civil subjects. Therefore, in the infringement of general personal information, its subjectivity should be stricter, that is, limited to intentional or gross negligence situations. Secondly, in the determination of damage, the focus is on whether it has caused actual damage. The infringement of privacy rights does not require proof of this point, while the infringement of personal information rights requires this result element. Finally, in terms of the way of assuming responsibility, there are two remedies for privacy rights in China's civil law, including tort liability and compensation for mental damages, while for personal information, more protection methods such as correction are adopted.

The above viewpoint is reasonable from the perspective of consistency between rights and obligations. However, in combination with the legal provisions and judicial practice on personal information protection, the protection of general personal information appears to be too lenient, which has a negative impact on the right to personal information self-determination.

### 3. Suggestions for Improving Privacy Rights and Personal Information Protection

#### 3.1. Concretize Privacy into Control

How to objectively transform the subjective criterion of "privacy" is a tricky problem. As some scholars have pointed out, if the judgment of "privacy" in private information cannot be separated from subjectivity, the problem of privacy judgment will continue to exist. The reason is not only that it is difficult for the outside world to explore the true thoughts of rights holders, but also that privacy is constantly changing with the change of social concepts. Therefore, it is worth exploring the criteria for determining privacy directly from the essence of privacy.

Natural persons need to monopolize their information interests through control. The essence of privacy benefits is a distribution of benefits. Privacy benefits need to be allocated based on the relationships between people. Some researchers have pointed out that the relationships between social members can generally be divided into two categories: competitive relationships and cooperative relationships. In competitive relationships, people need to control information related to themselves to ensure the boundaries of privacy; When there is a cooperative relationship, people choose to share information to maintain the cooperative relationship and achieve common goals, thus forming a boundary of privacy between people's selective sharing and control. In view of this, "privacy" can be concretized as the "control" of natural persons over their private information. Specifically, the strength of "control" can be judged by the relationship between the parties involved. In the case of a "cooperative relationship" between the parties, it is necessary for both parties to share private information, so the right holder's "control" over private information is weak at this time. On the contrary, in competitive relationships, the rights holder has a strong "control" over their private information. In such cases, the rights holder usually has the willingness to "not want others to know", so the information has "privacy". Using "control" as the criterion for judging "privacy" is not only more convenient for judicial personnel to judge, but also conducive to judicial unity, and also more in line with the requirements of the times.

#### 3.2. Comprehensive Case Handling of Sensitive and Confidential Information

In the protection and utilization of personal information, two logics and approaches should be integrated: the protection of privacy rights behind private information and the protection of personal information rights and interests behind sensitive personal information. In individual cases, a comprehensive judgment should be made based on factors such as the background of both parties, the field in which information is processed, and specific processing behaviors, in order to balance the protection of the interests of all parties involved. If the Personal Information Protection Law provides stronger protection for sensitive and confidential information, that is, it can be applied as a supplement to the privacy protection rules of the Civil Code by expanding the interpretation of Article 1034 (3) of the Civil Code to "not specified". Its purpose is consistent with the priority application of privacy rights stipulated in Article 1034 (3), and it still provides more comprehensive and comprehensive protection for sensitive and confidential information, It does not violate the legislative purpose. In terms of specific regulations, the Personal Information Protection Law has made more specific and detailed provisions on the rules of informed consent. Sensitive private information is more effectively protected by the rules of informed consent for sensitive personal information stipulated in the Personal Information Protection Law, which is not a controversial point. However, in terms of the balance between the attribution method and the protection and utilization of personal information, it is not possible to directly determine which rule is more favorable for the protection of parties by simply comparing the provisions of the Civil Code and the Personal Information Protection Law. At this time, it is necessary to combine individual cases, such as

the field of the information involved, the strong and weak positions of both parties, and the demands of the parties, to make a comprehensive case judgment and make appropriate value choices.

### 3.3. Clarify the Protection of General Personal Information

In the era of big data, personal information not only has private attributes, but also has public attributes. Legislation should achieve a balance of interests among all parties, maintain appropriate tension between personal information protection and utilization, maintain the personal dignity of natural persons, and encourage the rational use of information. In other words, a scientific and rigorous legal system for personal information protection should maximize the potential of digital economic entities while effectively safeguarding citizen rights, adhere to the principle of "protecting in development and utilizing in protection", and thus maximize the promotion of digital technology innovation and socio-economic development. Article 1 of the Personal Information Protection Law clearly states: "In order to protect the rights and interests of personal information, regulate personal information processing activities, and promote the rational use of personal information, this law is formulated in accordance with the Constitution." This indicates that although the Personal Information Protection Law is called the "Personal Information Protection" Law, its legislative purpose is not simply to protect personal interests, but to place equal emphasis on protecting personal information rights and promoting the rational use of personal information. And based on this, the basic principles of personal information protection and specific rules for processing personal information were formulated. Therefore, we cannot choose to exclude the development path of the digital economy under the pretext of protecting personal information, nor can we choose the basic position of sacrificing personal information security for the development of the digital economy. We should regard "protecting personal information rights" and "promoting the development of the digital economy" as dual value goals, while strengthening personal information protection and promoting the rational use of personal information.

## 4. Conclusion

In the era of big data, strengthening the protection of personal information has become a fervent expectation of the people. Strengthening personal information protection, handling the relationship between privacy rights and personal information protection, promoting coordination and balance between the two, from a national level, is conducive to improving personal information protection and promoting the development of the digital economy; From a personal perspective, privacy and personal information rights are important rights and interests of individuals, and a scientific protection system can promote the practical realization of rights and interests. In different contexts such as privacy rights, general personal information, private personal information, sensitive personal information, etc., specific case situations should be combined to comprehensively consider the applicable rules, in order to better protect rights and interests.

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