

# Personal Information Collection and Legal Checks and Balances after "Code"

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**Abstract:** "Health code" collect personal information for disease prevention and control is to protect the legitimacy of social public interests, but in the absence of regulation, lack of personal information protection consciousness, coupled with the collector to exercise is not fully follow the principle of proportion to the epidemic prevention and control power, makes the personal information collected by excessive did not get effective protection, a series of bad consequences. Health code collection of personal information should adhere to the principle of "minimum necessary", and ensure public awareness in the collection process, and improve the post-collection procedures of personal information, including the localization of anonymity and the right to be forgotten.

**Keywords:** Health code, Epidemic prevention and control, Personal information, The "least necessary" principle, Post-processing program

## 1. Introduction

COVID-19 is wreaking havoc across the globe, posing formidable challenges to the public health systems and emergency response capacity of countries around the world. To address this challenge, China took the lead in creating the health code epidemic prevention and control system, which has realized the timely and effective grasp of the development of the epidemic situation across the country. Using health code to epidemic prevention and control is the creation of hangzhou yuhang area, in January 2020, the hangzhou city yuhang district pioneered "health code" this small program, through the collection of the citizen's personal information and citizen autonomous way, to declare to make "health code" citizens travel health certificate and important reference of accurate epidemic prevention of local government. Subsequently, the remarkable prevention and control effect of health code made it quickly spread across the country, and many other places followed suit. In the absence of clear regulations, the epidemic prevention and control system of health code has been widely used in various places, exposing the problem of collection and protection of personal information quickly. By December 2020, the National Health Commission and other departments jointly issued a document, explicitly requiring all localities to implement the "health code" nationwide mutual recognition and one-code access.<sup>[1]</sup> The circular promoted the unification of the health code nationwide and officially established a nationwide health code epidemic prevention and control system, but related problems and controversies caused by the collection of personal information have not subsided.

Personal information is important, in the legislation, our country was born on August 20, 2020, the personal information protection act of the personal information protection into the new stage, the application of the code for epidemic prevention and control of the health system provides some personal information protection and litigation law, its popularization also makes people further realize the importance of personal information protection. The effective operation of the health code epidemic prevention and control system depends on the transfer of a large number of citizens' personal information rights and interests. What is the limit of such transfer, that is, for the purpose of epidemic prevention and control, what restrictions should be imposed on the collection and processing of health code personal information? This is an urgent problem to be solved in the context of the normalization of epidemic prevention and control.

## **2. Current Situation of Personal Information Collection and Protection of Health Code Application in the Context of Epidemic**

### ***2.1. Collection of Personal Information by Health Code under Epidemic Prevention and Control***

Health code is a TWO-DIMENSIONAL code formed by analyzing the holder's epidemic risk level information. It first sends the personal information collected by the health code to the background through individual declaration, and then the background generates the corresponding health code by analyzing the information and sends it to the applicant. Its advantages are that it can quickly locate and analyze individuals' whereabouts and tracks accurately through big data technology, integrate fragmented data, realize epidemic prevention and control information sharing and personal risk monitoring, and greatly improve epidemic prevention and control efficiency.

Health code is based on real data, and the source personal information required for the generation of its QR code has a strong timeliness, which also makes it of high confidentiality value to citizens. In most cases, applicants need to fill in real information including name, mobile phone number, current location, detailed address, whether they have left the current city in the past 14 days, whether they have been in contact with patients or suspected patients in the past 14 days, and current health status. After completion of the real information to fill in, system will be according to the existing health standard will these information with the background data analysis comparison, finally presents the red (impassable), yellow (unvaccinated), green (health can pass) the three colors of health code, and the health is a dynamic qr code, the code will change with the change in one's health.<sup>[2]</sup> The above information contains real information that can be located to specific individuals, such as whereabouts, contact information, and most of them are required to fill in the content, and the public does not have the right to choose.

The application of health code epidemic prevention and control system has certain legal basis. In the construction of socialist rule of law with Chinese characteristics, China pursues more society-oriented ideas, requiring citizens' individual rights and interests to make certain concessions to the public interests of the society, so as to pursue stronger social interests and promote the overall development and promotion of the group. In the context of epidemic prevention and control, the purpose of requiring citizens to transfer part of their personal information is to prevent social group infection, reduce the transmission channels of the epidemic, and reduce the damage to social public interests.

### ***2.2. The Current Situation of Legal Protection of Personal Information in China Against the Background of the Epidemic***

3 p.m. on February 3, 2020, the people's hospital of wenshan using three staff work is convenient, the cell phone video hospital computer records will be privately coronavirus pneumonia patients name, detailed address, work unit, the family travel path information, contact personnel, diagnosis and treatment, and other basic situation and spread through WeChat forwarding mode of transmission, This caused a high degree of panic among the residents of the relevant community, and also seriously affected the family safety of the patients. The occurrence of similar events not only damages the personal dignity of the parties, but also goes against social harmony and stability. In the era of big data on the Internet, the reasonable protection and utilization of citizens' personal information has become the most basic demand for the protection of citizens' personal dignity and rights and interests, so we must pay attention to the protection of personal information.<sup>[3]</sup>

In the context of epidemic prevention, although the government first cedes part of the public management power and then allows the platform to obtain the public's personal information,<sup>[4]</sup> But the truth is that it is Internet companies, rather than governments, that are mostly behind the operation of health codes, which collect and process information. However, in this era of big data, huge commercial interests are hidden behind a large amount of personal information. Such huge interests are undoubtedly irresistible temptations for these enterprises. If these enterprises obtain too much authorization, they may have information monopoly and uncontrollable risks.

China has clearly defined the concept of "personal information" as early as 2012 in the "Information Security Technology Public and commercial Service Information System Personal Information Protection Guide", However, this definition is relatively general and has a low level of validity, so it has not been recognized by the academic community and has not been used as a standard concept of "personal information". In 2016, the "Network Security Law" article 76 clarified the meaning of "personal information", which provides a certain legal basis for the definition of the concept of personal information, making personal information protection work further deepened. Article 1034 of Chapter vi

of China's Civil Code also points out that the personal information of natural persons is protected by law, and clarifies the concept of personal information. Articles 1037 and 1038 point out the rights of natural persons to their personal information and the obligations of information processors. Article 1039 emphasizes the obligation of the subject of public power and its staff to protect personal information. Compared with the Cyber Security Law, the Civil Code has deleted the "including but not limited" provisions of the Cyber Security Law, and added E-mail, health information, and whereabouts information. Currently, China has passed the Personal Information Protection Law, article 4 of which in August 2020 Further regulations on personal information have been made, adding provisions on information after anonymised processing. The above-mentioned normative legal documents constitute the basic normative system of personal information protection in China, and also provide a legal basis for the legal checks and balances on the collection and processing of personal information in epidemic prevention and control.

### **3. Analysis of Problems Related to Collection and Processing of Personal Information**

#### ***3.1. Insufficient Standardization of Information Collection Subjects***

In the context of the normalization of epidemic prevention and control, the health code will only become more and more common and become an important weapon in the fight against the epidemic. Meanwhile, the subject of information collection is also not standardized. For example, scanning code pages are posted on buses, airport buses and all kinds of communities, supermarkets and channels. All kinds of units and businesses have become the main body of information collection and processing. However, the collection and processing authority of personal information should belong to the public authority first, while other subjects play a more entrusted or auxiliary role. Due to the special role of personal information, we are bound to limit the collection and processing authority to the scope of public authority and its authorized organs. But the truth is, there is no lack of unauthorized collection business, community, supermarket and so on subject citizens' personal information, at the same time, the social public also difficult to distinguish whether the subject has the corresponding permissions, in this case, the personal information once leaks, individuals can accurate to find out the source of the leak, so that the citizen's personal information can not get better protection, When their rights are violated, they can not get timely relief.

#### ***3.2. Informed Consent Rules Fail***

Informed consent is a very important right for individuals and a principle recognized by the legislation of most countries, especially for the use and processing of personal information. Fully guaranteeing citizens' informed consent is the basis and important embodiment of realizing citizens' legal rights protection, and is also the procedural requirement for public disclosure of personal information in the context of epidemic prevention and control. As the core principle of China's Personal Information Protection Law, "notify-consent" emphasizes that when the relevant holder needs to use the personal information of a natural person, he/she should fully inform the individual in advance and obtain his/her consent. He/she should not deal with the personal information of a specific subject by means of misleading, coercion or fraud. Moreover, the provision of products or services to individuals should not be restricted because they do not consent to the use of their personal information. However, under the special situation of epidemic prevention and control, part of the private power must be transferred to the public interest, which determines that individuals have to agree to collect their information by health code. In this mandatory situation, the informed consent rules established by the Personal Information Protection Law fail, and individuals are no longer the absolute master of their information, which also determines that the personal information as a private right of the information subject is in a relatively weak position before the public interest as a public right, so it should be paid more attention to and guaranteed.

#### ***3.3. Absence of Personal Information Processing Procedures***

China's Personal Information Protection Law this year points out that personal information does not include personal information after anonymization. The anonymised information refers to the information that cannot be identified as a specific subject and cannot be restored after certain technical processing.<sup>[5]</sup>Anonymised information processing covers three main processes. One is anonymised personal information of confirmed patients, suspected patients and other subjects. Second, the purpose

of anonymised information processing is to make the information processed by technology unable to identify the specific subject and ensure that the information is no longer identifiable. Finally, the processed information can be easily irretrievable. However, it is clear to us that absolutely and completely irretrievable anonymised information is not guaranteed, nor can it be achieved with the existing technology. Therefore, what we call anonymised processing of personal information is a way to minimize the risk of personal information being compromised, rather than assuming 100% unidentifiable or irrecoverable technical processing.<sup>[6][7]</sup> But what kind of personal information can be regarded as personal information after anonymization, we should further clarify the standard of anonymization.

### ***3.4. The Collector Does Not Fully Follow the Principle of Proportionality in Exercising the Right to Epidemic Prevention and Control***

The principle of proportionality is a crucial principle used to restrain public power to prevent its excessive expansion of infringing on private rights. It requires that even for the purpose of protecting public interests, the infringement of individual rights should be as little as possible, so that the infringement of private rights and the protection of public interests are in an appropriate proportion. Under the normal situation of epidemic prevention and control, the collection and use of personal information does not fully follow the principle of proportion. For example, in some regions, not only the basic information, geographic location information and accommodation information of individuals are widely collected, but also the income information of individuals.<sup>[8]</sup> "Much of the information collected may not be necessary for epidemic prevention and control." The prevention and control of infectious diseases usually includes several stages, and the scope of information utilization is different in each stage due to different prevention and control purposes.<sup>[9]</sup> Some scholars put forward that in epidemic prevention and control, "policy objectives should be specific, rather than resorting to public health interests, and restrictions on individual rights and interests should be tolerated only to the extent necessary to achieve specific policy objectives".<sup>[10]</sup> In other words, even for the purpose of epidemic prevention and control, personal information should not be collected too frequently or excessively, which will lead to the virtual nullification of the principle of proportionality, which is intended to limit the abuse of public power.

## **4. Legal Suggestions on Personal Information Collection by Health Code System**

The creator, supervisor and final manager of the health code epidemic prevention and control system are all state organs, which are the product of the specific operation of state power in the field of public health under the background of epidemic. The supervision and management of them should follow certain principles and requirements. In the scope of collection, the principle of "minimum necessity" should be taken as the principle. In the process of collection, the public's right to know should be guaranteed, and anonymity should be ensured before they can be used publicly.

### ***4.1. Strengthen the "Minimum Necessary" Principle of Personal Information Collection***

The collection of personal information should be carried out to the minimum and necessary extent, and the collection of personal information by epidemic prevention and control departments must strictly abide by the principle of "minimum necessary" for epidemic prevention and control purposes. In short, the principle of "minimum necessary" means that the collection of personal information can be avoided or collected as little as possible, especially when the collection of personal information involves sensitive personal information and personal information of a third party. It is not easy to collect information unless it is irrelevant to the epidemic or especially necessary. The personal information protection act of our country stipulates biometric information, religious beliefs, specific identity, health care, financial accounts, whereabouts trajectory belongs to sensitive personal information, such as his request to be cautious when dealing with this kind of information again carefully, strictly follow certain rules, specifically in the treatment of sensitive personal information, Must have a specific purpose and must be collected, and should be carried out in the context of strict protection measures and inform the relevant subjects of the necessity and impact of disposal. The new progress of the personal information protection act one point is its will on the personal information of minors to the sensitive personal information, and specifies when dealing with the personal information of minors should first with approval of the parents or guardians of minors and set specifically for minors to personal information processing rules. China's Personal Information Protection Law has also made it clear that the processing of personal information should be conducted in a way that has the least impact on individual rights and interests, and the

processing of personal information should be limited to the minimum scope to achieve the purpose, and it also points out that, If it makes use of personal information for the purpose of automated decision making, it cannot impose unreasonable differential treatment on personal information in terms of transaction price and other transaction conditions.<sup>[11]</sup>Therefore, although the health code is indispensable in the process of epidemic prevention and control, the protection of personal information should not be relaxed. On the contrary, the protection of personal information should be strengthened, and the scope of collection should be strictly standardized, which is the new requirement of China's Personal Information Protection Law and the expectation of the public.

#### ***4.2. Fully Protect the Public's Right to Know about Personal Information***

Health code is not only a great initiative in epidemic prevention and control, but also another good strategy for digital governance in the era of big data. Epidemic disease resistance become a permanent basis, under the trend of data management is the first department of local governments, but whether it is a government department or something else, use program in optimizing health code, innovation management measures at the same time should be the main premise - protection of citizens' personal information, for all kinds of information of the holders of norms and constraints. Implement the principle of "informed consent", handing citizens option to true, use case principle to treat special groups, such as the elderly will not, do not want to release of personal information group, we should find some alternative methods to reflect the rule of respect for personal choice, the maximum protection of citizens' personal information autonomy.<sup>[12]</sup>Some administrative regulations on quasi-electronic identity certificates such as health codes are also needed to clarify their legal responsibilities in the collection, storage, processing and utilization of personal information, and promote health codes from "emergency codes" to "legal codes".<sup>[13]</sup>But for informed consent, what the public wants to know more is who is using their information, for what purpose, and what information is being used in all the information collected. For example, the Ministry of Public Security, epidemic prevention and control departments and other specialized government departments can directly collect citizens' personal information, while other relevant epidemic prevention and control departments can only obtain personal information related to epidemic prevention and control through these specialized departments. However, it is not necessary to fully grasp and know some information unrelated to the epidemic. These specialized departments only need to tell other departments that need health information whether a person is healthy or not. Second, the need to use personal information collected from the public, should be in the form of text messages or phone call, inform the parties need to use their personal information, and specific cohabitancy in told the what information will be used, with the main body, go on and use the personal information of the personal details will influence, etc. Finally, a special relief channel should be set up in the health code to ensure that the injured individuals can get timely and effective relief.

#### ***4.3. Improve Information Post-processing Procedures***

The so-called information post-processing program refers to a series of processes in which personal information is processed for the purpose of information collection and has been collected after collecting personal information. Currently, in the context of the normalization of epidemic prevention and control, information collection subjects still lack reasonable post-processing procedures for the collected information, which is reflected in two aspects. One is insufficient information anonymization processing, that is, personal information disclosure is not properly desensitized; Second, it is not clear how to deal with information after the purpose of information collection is realized. Therefore, the author thinks that the information post-processing procedure should be perfected.

##### ***4.3.1. Anonymize Personal Information***

Anonymous processing of personal information refers to that the information controller processes the natural person's original information through a certain technology and deletes the prominent identifiers corresponding to the personal information that can identify specific subjects in the information to achieve the purpose of failing to identify these specific subjects. Epidemic prevention and control of the collection and use of personal information is difficult to avoid, however in the public interest cannot be too much beyond the field of private rights, as a result, the personal information of anonymous processing is to realize the important means of public interests and personal interests balance, but the anonymous personal information after treated with above technology is not absolutely not identification and recovery, so, The standard of anonymous processing should be further improved. Holders first, personal information should be for those who can be deleted, direct identification information of the individual state can't identify specific subject identifier may be kept for interception, in order to facilitate the use of

medical treatment, scientific research and research in the future, namely to this part of the indirect identifier we can adopt flexible system rather than the mandatory anonymous. Secondly, we can learn from the experience of some foreign countries in anonymizing personal information, and then improve and change it based on our current epidemic prevention and control situation. For example, in the California Consumer Privacy Act (CCPA) of 2018, the holder of personal information shall be exempted from the informed consent obligation after anonymising and be liable for related infringement. For example, Japan's Personal Information Protection Law (Revision) (APPI) provides for the anonymization of personal information. In epidemic disease resistance under this big background, the data management department and researchers have realized traditional anonymous treatment have been because of the development of the Internet to keep up with the pace of technological development, need to improve and research the new anonymous processing technology, so as to maintain the stability of social relations, is conducive to the reasonable development and utilization of data. Finally, in the process of anonymity, we should take all factors into consideration and find a dynamic balance, because it will take a long time to achieve complete anonymity.

#### ***4.3.2. Localized Application of the Right to be Forgotten***

The right to be forgotten refers to the right of data subjects, such as personal information, to demand information controllers to delete the personal data of specific subjects in time without justified reasons.<sup>[14]</sup>It began as the right of ex-convicts to object to the disclosure of their crimes and their imprisonment, But with the expansion and extension of legislative spirit, its normative scope gradually radiates to the field of information right. In essence, Article 47 of the Personal Information Protection Law is the localization of the right to be forgotten. Therefore, after the purpose of information collection is realized, the collection subject should take the initiative to delete personal information. In fact, according to the current epidemic prevention and control requirements, personal information will lose its value for epidemic prevention and control after 14 days or at least 21 days. However, in reality, the subject of information collection has not deleted the relevant information, or it is not clear whether the information has been deleted, and there is no corresponding method query given to the subject of information. Therefore, whether from the perspective of the right to be forgotten in the field of private rights or from the perspective of China's Personal Information Protection Law, health code is suspected of infringement. For information, therefore, the crux of the unknown, the post-processing program should carry out the personal information protection act regarding the spirit, delete the personal information in the health code information such as the collection application localization was carried out on the right to be forgotten in the program, the purpose has been achieved in information processing, information without lose value or preserved when necessary, the information collected on delete personal information, at the same time, In order to balance private rights and public interests, the information subject should be given the right to inquire information processing status.

## **5. Conclusion**

Health code is a kind of information era of big data collect personal information technology means, is the strongest equipment for epidemic prevention and control under the normalized and weapons, but everything has its two sides, and health code is so, it is like a "double-edged sword", can it with good way, with the bad it might also be a means of personal information leakage. Health code almost contains all the personal information of a subject, such as name, telephone number, ID card number, personal health status, track, etc., which exposes the privacy of individuals and is related to the normal life of the subject of personal information. Therefore, it is imperative to further explore the protection of personal information of health code. Research on it is also the key to the current trend of normalized epidemic prevention and control. But also should pay attention to the social and public interests protection and the balance between personal interests protection, borrow to contain the epidemic prevention needs too much personal information collection as evil, we can't let as a important link in the resistance to disease and epidemic prevention and health codes play an important control force become endanger the personal information protection and harm the healthy development of the information society governance concerns, In-depth research on health code not only provides reference and suggestions for China's epidemic prevention and control and personal information protection under public health emergencies, but also has great significance for the implementation of China's Personal Information Protection Law in judicial practice.

## References

- [1] The National Health Commission, The National Medical Insurance Administration and the National Administration of Traditional Chinese Medicine issued the Notice on Furthering the "Internet + Healthcare" and "Five One" Service Action. <http://www.nhc.gov.cn/guihuaxxs/s7788/202012/15029c3f5e3f4dc78d6a7596567367c6.shtml>, last access date: on March 30, 2022.
- [2] Check Yunfei. Health code: automatic rating and utilization of individual epidemic risk [J]. Zhejiang Academic Journal, 2020(3) 29.
- [3] Wu Yi. From wuhan returning student: feel like athel loren, everyone with a list of hiding our [EB/OL] (2020-01-27) [2022-03-30]. [https://www.thepaper.cn/newsDetail\\_forward\\_5648247](https://www.thepaper.cn/newsDetail_forward_5648247).
- [4] Fang Xingdong, Yan Feng. Research on the challenges of digital social governance behind "Health Code" [J]. People's Forum -Academic Frontier,2020(16):78-91.
- [5] Shi Cheng. Legal protection of personal information in the prevention and control of major epidemic [J]. Journal of China university of mining and technology (social science edition),2020, 22(2):68.
- [6] Han Xuzhi. Legal Regulation of Anonymous Information in the Era of Big Data [J]. Journal of Dalian University of Technology (Social Science Edition), 2018 (4): 66-72.
- [7] Gerald Spindler & Philipp Schmechel. "Personal Data and Encryption in the European General Data Protection Regulation".Journal of Intellectual Property,Information Technology and Electronic Commerce Law, vol.7, 2016, pp. 163-177.
- [8] New media, the official Xinhua News Agency. For disease resistance "hand over" where is the personal information [EB/OL]. (2020-05-11) [2022-03-30]. <https://baijiahao.baidu.com/s?id=1666390668594668081&wfr=spider&fOr=PC>.
- [9] BERNIER C, FONG L,BANKS T M. Pandemics in a connected world: integrating privacy with public health surveillance[J].university of new brunswick law journal,2015,(66):117-136.
- [10] Jiang Wancui.Research on the regulation of public health monitoring -- based on the United States law and the current situation in China [J]. Dongwu Law Journal, 2017(1):81-126.
- [11] Economic information network (the economic information daily, the official Xinhua News Agency web site). The personal information protection act of personal information processing principles [EB/OL]. [2022-03-23]. [http://www.jjckb.cn/2021-08/24/c\\_1310144650.htm](http://www.jjckb.cn/2021-08/24/c_1310144650.htm).
- [12] Cheng Chao, Gu Shenyong.Practical dilemmas and coping strategies of Personal information protection in the life cycle of health codes [J]. Computer Knowledge and Technology, 201,17 (18):56.
- [13] Gao Yandong. Promoting health code from "emergency code" to "legal code" [N]. Learning Times, 2020-10-16(3).
- [14] Jingdong Law Research Institute. Review and Practice Guidelines on the General Data Protection Regulation (GDPR) of the EU Data Charter [M]. Beijing: Law Press, 2018:64.