

**Openness Mandated by PRC Law, Secrecy is Illegal:  
But is Non Government Information Just Punishable Rumor?**

By David Cowhig

The 1989 Epidemic Control Law made it illegal for any level of government to conceal the fact of an epidemic. It requires the central government to make timely and truthful reports about epidemics. However, it is also illegal for private citizens and organizations to spread false rumors. Sometimes one is tempted to suppose that much information about epidemics that the government did not issue might well be considered to be punishable rumor.

Central and provincial level health authorities send around confidential internal circulars and even keep top secret documents on health matters. Top secret documents kept by both the central government Ministry of Health and Henan provincial government Provincial Health Bureau on the spread of HIV/AIDS throughout Henan in the early and mid 1990s are the best known example. Some Chinese officials have even at times advanced the ingenious argument that health secrecy (specifically keeping secret the incidence of a disease such as AIDS) protects the collective privacy of a locality. A locality might suffer economically if people know that there was an epidemic raging there. That is probably true. Could it be that Chinese privacy law is in some ways more advanced than the privacy legislation of the USA, for example?

PRC Prime Minister Wen Jiabao on May 12 issued “Emergency Regulations of Public Health Emergencies” that provide for the thorough implementation of the 1991 Epidemic Control Law. The new regulations require local government reporting to the central government reporting within two hours of the occurrence of a major health emergency as well as notification of the local people's government. This represents progress both technical and legal: now that data networks link national and local health authorities, quicker reporting is demanded. The new regulations, like many PRC laws and regulations of the past several years, are much more detailed and are more specific on how they are to be implemented than comparable documents of a decade ago. This gives grounds for optimism.

However, once we place the new regulations in the context of PRC legislation on epidemics, we realize that we will just have to wait and see. While the new regulations are to be a step forward, one's enthusiasm may be restrained by the realization that hiding information about epidemics has been illegal in China for over ten years.

No one seems to have ever been convicted of this offense, however. Perhaps that will change. Where is the National People's Congress special prosecutor or the investigator from the Central Disciplinary Commission of the Communist Party who is willing to go as far up the leadership chain as high as necessary, asking “What did you know? When did you know it?” Maybe some day.

On May 12, the very same day that Prime Minister Wen Jiabao released the new regulations to promote openness, the Beijing Morning News [Beijing Chenbao] carried an article on how people who spread rumors about SARS could be jailed for up to five years. Angry reactions to that article on a PRC internet portal Sina.com.cn, translated in part below, give some indication

of popular anger about health secrecy and the high price Chinese people have paid for health secrecy. That anger about official secrecy on health matters just might force officials to take more seriously principles of openness and integrity in reporting of epidemics which have already been part of Chinese law for some time.

We'll understand the discussion better if we wade through some legal details first.

Chapter 3, section 22 and 23 of the PRC Epidemic Control Law of 1989 [<http://www.jincao.com/fa/law10.32.htm>] states clearly that keeping information about an epidemic secret is illegal. So the Chinese physicians who spoke out and the western media that reported the cover-ups are far from being people who would demonize China. They are actually guardians of socialist legality. Translations of the relevant sections of the 1991 Epidemic Control Law [my rough translations] follow.

Section 22 Leaders and others in contagious disease therapy and prevention work at each level of government such as health or epidemic worker or supervisory managerial workers should not hide information or make false reports about an epidemic. Similarly, they should not falsely report or knowingly accept the hiding of information or false reports of others about an epidemic.

Section 23 The State Council Health administrative department should make timely and truthful public reports of the epidemic situation and can authorize the health departments of provinces, autonomous regions and municipalities to make timely and truthful reports on an epidemic.

Of course, despite the law secrecy has continued to be endemic at all levels. The Epidemic Control Law of 1989 did set down requirements for how government officials should behave but listed no sanctions. Only with the revised criminal code of 1998 were criminal penalties attached to violations.

The test of whether SARS will create new openness will be if we suddenly see more openness about say AIDS in rural China or various government foul-ups that could embarrass the Party and Government. Taking the new openness about SARS as a sign of new openness in general would probably be hazardous.

The news.sina.com.cn internet portal carried an article from the May 12 Beijing Morning News (Beijing Chenbao) stating that people who spread rumors about SARS can be sentenced to up to five years in prison. The article is at <http://news.sina.com.cn/c/2003-05-12/0507115352s.shtml>

According to the Beijing Morning News article, a lawyer at a Beijing law firm said that section 291 of the PRC Criminal Code makes purposely spreading false frightening information a crime. This can include using a cell phone or the internet to spread rumors such as a city is being sealed off, martial law has been declared, there is such and such a number of SARS cases in a certain locality, a certain number of people have died, etc. All these actions can be punished as a violation of Section 291 of the PRC Criminal Code. These strictures apply to instant messaging on cell phones (email essentially) as well as to internet email and websites.

[Here is my informal translation of Section 291 of the PRC Criminal Code: Section 291 Gathering together to disturb the order of a bus station, wharf, civil airfield, market, park, movie theatre, exhibition sports field or other public place, or gathering together to block traffic or damage the order of traffic, opposing or impeding state public security officials as they carry out their duties according to law, shall, in serious instances, result in a penalty applied to the leaders of the group of five years or less in prison, of a term of detention, or other restriction. The Chinese text is available at <http://www.jincao.com/fa/law02.01.htm> ]

News.sina.com.cn carries a discussion of this article. One remarkable feature of this Chinese news web portal is that readers can leave comments on many news items. Their comments are a window into Chinese public opinion. The discussion had drawn 41 by the late evening of May 12. The comments, in Chinese, are at <http://comment.sina.com.cn/cgi-bin/comment/comment.cgi?channel=gn&newsid=1047387>

Among the 41 comments were:

- Severely punish false information and rumors!
- Just think for a minute: if we had an open, fair country, why would we have anything to worry about from rumors?
- The consequences of someone hiding the truth are far more serious yet there has never been a case of anyone ever convicted of hiding the truth!
- The people believe that the people responsible for hiding the truth should be punished by the death penalty. Simply firing them is frustrating the will of the people!
- Just what is a rumor? Could it really be that all non-official speech is a rumor. Think of how events have unfolded. Why did so much come out through unofficial channels and was confirmed only later?
- Willfully spread false rumor is evil, and there should be sanctions against doing that. But if it is clearly true. Does that constitute a rumor?
- The way to fight rumors is greater freedom of expression!
- Just publicize the truth and don't worry about rumors. They will fade away by themselves.
- Is there really a Section 291?
- [in English] Be careful. It's in China, not in America.
- Letting officials light a fire, but not letting the people even light a lamp. [a Chinese popular saying]

This unscientific sampling of Chinese opinion on health secrecy and the many comments can help illuminate many of the issues involved. The comments can also help us understand why the Chinese Party and government might well prefer that many of these comments not spread any further.

I am no lawyer. I enjoy however, this opportunity to incite wise comments from people much better acquainted with PRC law and how it really works.

[Some Chinese language texts of PRC fundamental health laws and orders interpreting these laws are to be found at <http://www.jincao.com/fa/law10.htm> ]