SPC Guiding Case No. 193: Case of Wen Wei et al. for Infringement of Citizens' Personal Information

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Keywords

Criminal / infringement of citizens' personal information / resident identity card information

Holding

Resident identity card information includes a natural person's name, facial recognition information, identity number, registered household address, and other personal information, and belongs to the "other citizens' personal information that may affect personal or property safety" prescribed in item 4 of paragraph 1 of Article 5 of the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Law in the Handling of Criminal Cases of Infringement of Citizens' Personal Information. Where a person illegally obtains, sells, or provides resident identity card information, and the circumstances are serious, the person shall constitute the crime of infringing citizens' personal information pursuant to paragraph 1 of Article 253-1 of the Criminal Law.

Basic Facts

From June to August 2019, the defendant Wen Wei (then the operations director of Shanghai Haoti Information Technology Co., Ltd.), after making prior contact, agreed with persons under the WeChat and QQ names "Fale," "Lailizhong," "I'm Afraid of Cold Wind," and others to batch-register and activate for the aforesaid persons, at a price of RMB 6 per card, the "Zhongyintong · Mofangyuan" co-branded prepaid cards of the company's "Aiqiu Wallet" app, and obtained citizens' personal information (front and back photographs of resident identity cards) from the aforesaid persons by obtaining Baidu Cloud drive share links through WeChat and QQ. The defendant Zhu Xudong downloaded the information from the drive links to a mobile hard disk and handed it to Zhongyintong staff for batch registration and activation.

From September 2019 to February 2020, after Wen Wei left his post, the defendant Zhu Xudong was responsible for the batch registration and activation of the aforesaid co-branded prepaid cards and, at a price of RMB 6 per card, continued to obtain citizens' personal information (front and back photographs of resident identity cards) from "Fale," "Lailizhong," "I'm Afraid of Cold Wind," and others by the same means of obtaining Baidu Cloud drive share links through WeChat and QQ, stored the information in his Baidu Cloud drive, then downloaded it to his computer hard disk, and handed it to Zhongyintong staff for batch registration and activation.

In October 2019, the defendant Zhu Xudong and Zhang Kun (handled in a separate case), after making prior contact through WeChat, had Zhu Xudong, at a price of RMB 6 per card, obtain citizens' personal information (front and back photographs of resident identity cards) from Zhang Kun by the same means of obtaining a Baidu Cloud drive share link through QQ, store the information in his Baidu Cloud drive, then download it to his computer hard disk, and hand it to Zhongyintong staff for batch registration and activation.

In December 2019, the defendant Zhang Jiangtao purchased citizens' personal information data from others through the QQ group he was in, transferred and stored the data in his Baidu Cloud drive account, and simultaneously resold the data to Zhang Kun in several batches, collecting fees totaling RMB 19,600 in several batches.

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Upon verification, over 10,000 sets of citizens' personal information (front and back photographs of resident identity cards) were counted from the "Ernie Gullit" drive of defendant Wen Wei; over 3,000 sets of citizens' personal information (front and back photographs of resident identity cards) were counted from the "zhuxudn" drive of defendant Zhu Xudong; 41,654 sets of citizens' personal information (front and back photographs of resident identity cards) were counted from the drive shared by Zhang Kun with Zhu Xudong; and 60,101 sets of citizens' personal information were counted from the drive of defendant Zhang Jiangtao.

The Hongkou District People's Procuratorate of Shanghai charged the defendants Wen Wei, Zhu Xudong, and Zhang Jiangtao with the crime of infringing citizens' personal information, with especially serious circumstances, and held that their conduct should be pursued for criminal liability for the crime of infringing citizens' personal information.

The defenders of defendants Wen Wei and Zhu Xudong both argued that the type of citizens' information charged in this case should be determined to fall within the scope of ordinary information in item 5 of paragraph 1 of Article 5 of the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Law in the Handling of Criminal Cases of Infringement of Citizens' Personal Information (hereinafter the "Interpretation"), rather than the scope of the specific type of information in item 4 of paragraph 1 of Article 5; therefore, based on the quantity currently seized, the circumstances had not yet constituted especially serious circumstances.

Judgment

On August 30, 2021, the Hongkou District People's Court of Shanghai, by Criminal Judgment (2020) Hu 0109 Xing Chu No. 957, determined that the defendant Wen Wei committed the crime of infringing citizens' personal information and sentenced him to fixed-term imprisonment of three years and a fine of RMB 10,000; the defendant Zhu Xudong committed the crime of infringing citizens' personal information and was sentenced to fixed-term imprisonment of three years and three months and a fine of RMB 10,000; the defendant Zhang Jiangtao committed the crime of infringing citizens' personal information and was sentenced to fixed-term imprisonment of three years and a fine of RMB 20,000; the illegal gains and instruments of the crime were ordered to be recovered and confiscated. After the judgment was pronounced, the defendants Wen Wei and Zhu Xudong filed appeals. On November 11, 2021, the Shanghai Second Intermediate People's Court, by Criminal Ruling (2021) Hu 02 Xing Zhong No. 1055, dismissed the appeals and affirmed the original judgment.

Reasoning

The court in its effective judgment held: The focal issue of the dispute in this case was whether the resident identity card information involved belonged to the "other citizens' personal information that may affect personal or property safety" in item 4 of paragraph 1 of Article 5 of the Interpretation. Pursuant to item 4 of paragraph 1 of Article 5 of the Interpretation, illegally obtaining, selling, or providing accommodation information, communication information, health and physiological information, transaction information, or other citizens' personal information that may affect personal or property safety in quantities of 500 or more may be determined as "serious circumstances." Item 5 of the same paragraph provides that illegally obtaining, selling, or providing citizens' personal information other than that prescribed in items 3 and 4 in quantities of 5,000 or more may be determined as "serious circumstances." That is, if the resident identity card information involved is determined to belong to the "other citizens' personal information that may affect personal or property safety" in item 4 of paragraph 1 of Article 5 of the Interpretation, then trading 500 or more pieces of personal information may be determined as "serious circumstances," and 5,000 or more as "especially serious circumstances."

The first-instance court held upon trial that the address on a resident identity card is the citizen's actual residential address or nominal registered household address; whichever it is, it has a very close and important connection with the personal safety and property safety of the citizen and his or her family. The

illegal exposure and disclosure of a home address would create a major hidden danger to the personal safety and property safety of the citizen and his or her family, and would open a convenient door to the precise commission of various illegal and criminal acts. Therefore, it should be given key protection. Proceeding from the general principle of legal interpretation of "a fortiori" (the greater includes the lesser), its importance should also be higher than the "accommodation information" that is a citizen's temporary and past residence, and it should therefore be determined to be the type of information prescribed in item 4 of paragraph 1 of Article 5 of the Interpretation.

The second-instance court held upon trial that a resident identity card, in addition to containing registered household address information, is also a synthesis of information such as the citizen's name, facial information, and unique identity number, and is an important identity document of the citizen. In the information network society, resident identity card information as a whole is sensitive information and can be used to register, authenticate, and bind network accounts. The citizens' personal information formed by combining a citizen's facial information, identity number, name, and address information is unique, can be precisely matched with an individual citizen, and can induce the further disclosure of other personal information of the citizen, greatly infringing citizens' personal information rights and interests. Resident identity card information should be determined as a whole to be information involving citizens' personal and property safety. Although the first-instance and second-instance courts differed in their reasoning and determination standards, their conclusions were consistent. The first-instance court's conviction of Wen Wei and Zhu Xudong and application of law were correct, and the sentencing, made in consideration of their criminal means and circumstances, was not improper, and the trial procedure was lawful. Accordingly, it ruled to dismiss the appeals and affirm the original judgment.

Relevant Legal Provisions

Paragraph 1 of Article 253 of the Criminal Law of the People's Republic of China.

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