

Guiding Case No.194

Case of Infringement of Citizens' Personal Information by Xiong Changheng et al.

(Adopted through discussion by the Adjudication Committee of the Supreme People's Court and issued on December 26, 2022)

Keywords: Criminal/Infringement of Citizens' Personal Information/Wechat Account/Social Media Account/Illegal Acquisition/Reasonable Processing

Key Points of the Judgment

1. Whoever, in violation of the relevant provisions of the State, purchases a registered but unused social media account such as Wechat account, illegally produces the social media account such as Wechat account with citizens' personal information that can be used for social activities, and sells and provides others with such account through marketing software with functions such as intelligent mass texting, adding friends and establishing discussion groups, with serious circumstances, commits the act of "in violation of the relevant provisions of the State, selling or providing others with the personal information of a citizen" as stipulated in Paragraph 1 of Article 253-1 of the Criminal Law and constitutes the crime of infringing citizens' personal information.
2. Whoever, without the consent of a citizen, or without the legal authorization or other reasons stipulated in the Personal Information Protection Law, obtains and illegally uses a citizen's personal information that has been made public within a certain scope through purchasing, accepting, exchanging and other means, and changes the scope, purpose and use of the personal information made public by the citizen, does not conduct reasonable processing prescribed by the law, but commits the act of "illegally obtaining citizens' personal information otherwise" as stipulated in Paragraph 3 of Article 253-1 of the Criminal Law, and if the circumstances are serious, constitutes the crime of infringing citizens' personal information.

Pertinent Legal Provisions

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

Basic Facts

In June 2020, the defendant, Xiong Changheng, invited the defendants, Xiong Changlin, Xiong Gonglang and Xiong Changqiang, to engage in business activities of selling finished Wechat accounts containing citizens' personal information that could be used for social activities, making little profit during this period due to lack of experience. In order to seek more interests, at the end of September 2020, the defendants, Xiong Changheng, Xiong Changlin, Xiong Gonglang and Xiong Changqiang, jointly invested to buy on the Internet software called "Weiqibing" (marketing software based on the computer version of Wechat running with multiple-clone and multiple-account intelligent mass texting, addition of friends, join in and withdrawal from groups, and fan clearing), used it to illegally add Wechat friends, and made the finished Wechat accounts for sale. In October 2020, Qin Yingbin (on the run), a friend of the defendant, Xiong Changheng, invested CNY50,000 (who owned 40% of the shares); Xiong Changheng invested CNY20,000 (who owned 20% of the shares); the defendants, Xiong Changlin, Xiong Gonglang and Xiong Changqiang, invested in a certain number of computers and mobile phones (who owned 10% of the shares respectively); the defendant, Fan Jiacong, did not invest (who owned 5% of the shares); proceeds from another 5% of the shares were used for the company's overheads. Later, they bought office desks, computers, second-hand mobile phones and other items together, rented Linglongge Building, Wuhua Road, Hezhou Sub-district, Fengcheng City, Jiangxi Province, and set up "Fengcheng Changwen Trading Co., Ltd.". Qin Yingbin was responsible for the procurement of blank Wechat accounts and sales of finished Wechat accounts. The defendant, Xiong Changheng, was responsible for the internal management of the company and recruitment of employees. The defendants, Xiong Changlin, Xiong Gonglang, Xiong Changqiang and Fan Jiacong, and hired employees were directly involved in the illegal production of finished Wechat accounts with the "Weiqibing" software. Qin Yingbin sold

finished Wechat accounts at a high price, illegally obtaining profits.

In January 2021, the defendants, Xiong Changheng, Xiong Changlin, Xiong Gonglang, Xiong Changqiang, Fan Jiacong and Qin Yingbin, worked together to illegally obtain other job seekers' information (including the name, gender, phone number and other basic personal identity information of citizens) through online purchase while selling finished Wechat accounts, and then distributed such information to employees of the company. With the reward method of paying a commission of about CNY10 for the addition of a job seeker on Wechat, employees were told to lie about being employees of "Public Technology Media", and ask job seekers to add the "tutor" on Wechat with the prepared verbal trick of taking a click farming part-time job, attracting victims to join the group and deceiving some victims.

In the business period, after paying salaries and related expenses, the defendants, Xiong Changheng, Xiong Changlin, Xiong Gonglang, Xiong Changqiang, Fan Jiacong and Qin Yingbin, received the total dividends of more than CNY200,000, which was distributed according to their respective shares. The specific profit amount was as follows: the defendant, Xiong Changheng, obtained CNY58,000, the defendant, Xiong Changlin, obtained CNY29,000, the defendant, Xiong Gonglang, obtained CNY29,000, the defendant, Xiong Changqiang, obtained CNY29,000, and the defendant, Fan Jiacong, obtained CNY14,500.

Decision

On September 23, 2021, the People's Court of Fengcheng City, Jiangxi Province made criminal judgment [2021] Gan 0981Xing Chu No.376, deciding that the defendant, Xiong Changheng, should be sentenced to fixed-term imprisonment of three years and two months for the crime of infringing citizens' personal information, and fined CNY100,000; the defendant, Xiong Changlin, should be sentenced to fixed-term imprisonment of one year and ten months for the crime of infringing citizens' personal information, and fined CNY60,000; the defendant, Xiong Gonglang, should be sentenced to fixed-term imprisonment of one year and ten months for the crime of infringing citizens' personal information, and fined CNY60,000; the defendant, Xiong Changqiang, should be

sentenced to fixed-term imprisonment of one year and ten months for the crime of infringing citizens' personal information, and fined CNY60,000; the defendant, Fan Jiacong, should be sentenced to fixed-term imprisonment of ten months for the crime of infringing citizens' personal information, and fined CNY30,000 (already paid); the illegal gains of CNY14,500 returned by the defendant, Fan Jiacong, should be confiscated, and turned over to the national treasury in accordance with the law; the illegal gains of CNY58,000, CNY29,000, CNY29,000 and CNY29,000 further recovered from the defendants, Xiong Changheng, Xiong Changlin, Xiong Gonglang and Xiong Changqiang, respectively, should be confiscated and turned over to the national treasury in accordance with the law; the seized mobile phones should be confiscated and disposed of by the seizure authority in accordance with the law.

Reasons for the Decision

The effective judgment held that the defendant, Xiong Changheng et al., in violation of the relevant national provisions, jointly invested to buy blank Wechat accounts and marketing software with functions such as intelligent mass texting, addition of friends and join in groups, bought other job seekers' information through the Internet, illegally added friends on Wechat, made finished Wechat accounts for sale or provided illegally obtained citizens' personal information to others, and made profits from them, with particularly serious circumstances, constituting the crime of infringing citizens' personal information. Citizens' personal information in this crime refers to information that is closely related to citizens and is undesirable to be known by other groups other than specific groups. If the illegally obtained citizens' personal information is citizens' private information or information that may have extremely adverse consequences after being leaked, it will not only seriously infringe the safety and legitimate rights and interests of citizens' personal information, but also provide help for online gambling, telecom network fraud and other illegal and criminal activities, seriously disturb the social public order, and have a great social harm. Wechat is not only a communication tool, but also has social contact, payment and other functions. A Wechat account is bound with a real name-registered mobile phone number as well as any bank card of a natural

person on a one-to-one basis, so a Wechat account can be considered as citizens' personal information.

The defendant illegally processed the disclosed personal information to make profits therefrom, violated the purpose of disclosure of the information or obviously changed its use, endangering the personal or property safety of individuals after further use of the information, with particularly serious circumstances, constituting the crime of infringing citizens' personal information.

To sum up, without the consent and authorization of the right holder, the defendants illegally obtained others' Wechat accounts and resold them for profit, or illegally processed the public personal information of citizens, exposing others' personal information to the risks of disclosure and loss of control, and obtained huge illegal gains from them, violating national provisions, infringing rights related to citizens' personal information, and constituting the crime of infringing citizens' personal information.

(Judges of the Effective Judgment: Wang Yuehua, Hu Yibo and Li Luanfang)