

THAI THI TUYET DUNG, DAO GIA PHUC

Balancing the Right to Access Information, the Right to Privacy, the Right to Personal Data Protection, and the Right to be Forgotten in the Digital Age: the Case of Vietnam*

Abstract

Before the advent of the information technology revolution, there was a strong desire for freedom of information and how to access it, as such freedom could be considered as a right to defend rights, meaning that information provided the 'basis' for defending other rights. However, with the abundance and diversity of information and information technology applications, a vast information environment has emerged that transcends national borders with a growing public demand for the protection of privacy right, personal data protection right, and the right to be forgotten. The development of devices using information technology has facilitated the posting of information on the internet, leading to increased privacy infringements and personal data breaches. Also, many individuals wish their information would not be permanently stored online. Thus, this paper analyzes the relationship between the freedom of information, privacy right, personal data protection right, and the right to be forgotten, and reviews relevant regulations in Vietnam in order to propose legal reform recommendations.

THAI THI TUYET DUNG – PhD in law, University of Economics and Law, Ho Chi Minh City, Vietnam, Vietnam National University, Ho Chi Minh City, Vietnam, ORCID – 0000-0002-5570-2988, email: dungttt@uel.edu.vn

DAO GIA PHUC – PhD in law, University of Economics and Law, Ho Chi Minh City, Vietnam, Vietnam National University, Ho Chi Minh City, Vietnam, ORCID – 0000-0003-0791-2152, e-mail: phucdg@uel.edu.vn

* This research is funded by University of Economics and Law, National University Ho Chi Minh City, Vietnam

[HTTPS://DOI.ORG/10.36128/PRIV.VI53.1221](https://doi.org/10.36128/PRIV.VI53.1221)

KEYWORDS: freedom of information, right to privacy, right to data protection, right to be forgotten, information technology revolution

1 | Introduction

Throughout history, humans have consistently depended on information, profoundly impacting all life facets, including economics, culture, social structures, politics, and protecting fundamental human rights. Information has become a crucial survival need in the modern era, characterized by the rapid expansion of the internet and media^[1]. It underpins all societal activities, ensuring that everyone must have access and participate fully. This evolution has prompted a global reassessment of information's critical importance and influence, highlighting the need to bridge the digital divide to ensure equitable benefits from the information society. As a result, there was a profound desire for freedom of information and access to it^[2]. This freedom was regarded as a foundational right, protecting other rights by providing the necessary information to support their defense. The demand for transparency arose from concerns over secrecy, which directly contributed to abuses of power, authoritarianism, and corruption.

In the present day, the plethora of information and its technological applications has created a vast, borderless information environment. Along with the progress and positive aspects of information freedom, the number of privacy and personal data breaches on social media is increasing, as well as the number of individuals who do not wish their information to be permanently stored online. Consequently, there is now a public expectation for governments to implement strong measures to protect privacy, personal data, and the right to be forgotten. These measures are essential to ensure that individuals can navigate this expansive digital landscape without compromising their fundamental rights. Thus, the focus has shifted

¹ Martin Carnoy, *The New Global Economy in the Information Age: Reflections on Our Changing World* (Penn State Press, 1993).

² Nagy Hanna, *The Information Technology Revolution and Economic Development* (World Bank Publications, 1991), 4.

towards ensuring that privacy rights and the right to be forgotten are recognized and protected by law^[3].

Vietnam is among the countries with the highest internet development and adoption rates worldwide, currently ranked 13th globally with over 72 million users^[4]. In addition, the government is vigorously advancing the development of e-government, aiming towards a digital government and digital economy, with many significant achievements already made. However, like many other countries, Vietnam faces prevalent issues such as privacy breaches, as well as the theft and trading of personal data. Therefore, researching the specifics of these rights and the relationships between them to determine approaches for handling violations presents a challenging issue in legislative activities. It requires time and a clear understanding of the principles of information, as well as the value and the consequences of its dissemination.

2 | The History and the Development of Freedom of Information, Privacy Rights, and the Right to be Forgotten

2.1. Freedom of Information

The post-World War II era marked a significant turning point in recognising the right to freedom of information. This right gained widespread recognition, enshrined early in international documents such as the 1946 United Nations General Assembly Declaration, which stated, “Freedom of information is a fundamental human right and the touchstone of all the freedoms to which the United Nations is consecrated”. The Universal Declaration of Human Rights (UDHR) of 1948 further asserted, “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold

³ Franz Werro, *The Right To Be Forgotten: A Comparative Study of the Emergent Right’s Evolution and Application in Europe, the Americas, and Asia* (Springer Nature, 2020), 1-33.

⁴ “Báo VietnamNet” VietNamNet News <https://vietnamnet.vn>. [accessed 20.08.2024].

opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers”^[5].

After these covenants, the right to freedom of information became a significant focus and created a global wave. At the regional level, freedom of information was articulated in the European Convention for the Protection of Human Rights and Fundamental Freedoms^[6], the American Convention on Human Rights^[7], and the Anti-Corruption Action Plan for Asia and the Pacific^[8]. These agreements ensure that the public and media can freely receive and disseminate information about corruption under national laws. Additionally, provisions for access to information are reflected in various international conventions across other fields.

In Vietnam, the right to freedom of information has evolved over time, not being directly stipulated but indirectly acknowledged in various constitutions. The 1946 Constitution, for instance, includes provisions that reflect the spirit of this right, such as “Vietnamese citizens have the right to freedom of speech; freedom of the press” (Article 10), and “The National Assembly meets publicly, and the public is allowed to attend. The press is permitted to report on the Assembly’s discussions and resolutions” (Article 30). Subsequent constitutions in 1959 and 1980 also included provisions on freedom of speech and freedom of the press but did not explicitly address the right to freedom of information. It was in the 1992 Constitution that the right to access information was recognized. The right to access information is narrower in scope compared to the right to freedom of information. The latter emphasizes the unrestricted flow of information among all entities in society, where the state has no right to obstruct and is obligated to facilitate this free flow. In contrast, the right to access information focuses on ensuring citizens know, obtain, and use information about state activities or information held by state agencies^[9].

The right to freedom of information encompasses the freedom to seek, receive, and impart all types of information and opinions, irrespective of

⁵ UN. General Assembly, 3rd sess.: 1948-1949: Paris, Final Act of the United Nations Conference on Freedom of Information, 1948. <https://digitallibrary.un.org>.

⁶ Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms 1950.

⁷ Organization of American States, American Convention on Human Rights.

⁸ ADB OECD Anti-Corruption Initiative and for Asia-Pacific, Anti-Corruption Action Plan for Asia and the Pacific.

⁹ Dung TTT, *Quyền Tiếp Cận Thông Tin Của Công Dân ở Việt Nam* (Nhà xuất bản Đại học Quốc gia thành phố Hồ Chí Minh, 2015).

the domain, whether orally, in writing, in print, or through artistic expressions via any chosen media. The term “freedom of information” has a broad connotation, acknowledging and safeguarding the human right to freely access and exchange information in all its forms with any individual. Protecting this freedom aims to facilitate the unimpeded flow of information within society, free from unreasonable restrictions. In contemporary times, the advent of information technology has significantly bolstered the exercise of this right, sometimes to the extent of overshadowing other rights, such as the right to privacy.

2.2. The Right to Privacy

The right to privacy, a fundamental human right that has been recognized for centuries, gained significant attention with the information technology revolution. This revolution created conditions that facilitated widespread violations of this right, bringing it to the forefront of public concern^[10]. Among all human rights, the right to privacy is perhaps the most challenging to define, with definitions varying widely based on the conditions and cultures of different countries^[11]. In the contemporary context, the right to privacy is regarded as a fundamental aspect of human dignity and is valued on par with other freedoms, such as freedom of speech^[12]. The right to privacy entitles individuals to keep confidential information, documents, and data related to their private lives. It encompasses the inviolability of their person, home, correspondence, telephone, telegrams, and other electronic communications, ensuring that no entity may access or disclose such information without the individual’s consent or a decision from a competent state authority^[13]. This right enables individuals to establish and maintain reasonable boundaries with others, protecting them from arbitrary intrusions into their lives. It also allows individuals

¹⁰ Spiros Simitis, “Reviewing Privacy in an Information Society” *University of Pennsylvania Law Review*, No. 3 (1987): 738.

¹¹ Colin J. Bennett, “In Defense of Privacy: The Concept and the Regime” *Surveillance & Society*, No. 4 (2011): 2.

¹² Simon Davies, *Big Brother: Britain’s Web of Surveillance and the New Technological Order* (London: Pan Books, 1996).

¹³ Dung TTT, “Quyền riêng tư trong thời đại công nghệ thông tin” *Tạp chí Nghiên cứu Lập pháp*, No. 9 (2012).

to define their identity and determine how they wish to engage with the world around them.

The right to privacy is increasingly challenging to determine in the digital age, mainly when considered alongside other freedoms such as freedom of the press, access to information, and freedom of speech. Social media platforms could be used to blatantly violate others' privacy, including disclosing personal secrets, revealing banking transaction details, publishing defamatory content, hacking into personal devices to share sensitive clips on social media, and collecting and potentially personal data to interested parties – often without facing significant legal consequences^[14]. Additionally, the legal framework addressing these issues remains a “complex puzzle” because technological advancements have often outpaced regulations. Yuval Noah Harari, the author of *Homo Deus: A Brief History of Tomorrow*, has expressed concern that “the Internet and social media represent lawless free zones that erode national sovereignty, ignore borders, destroy privacy, and pose perhaps the most frightening global security threat”^[15].

In Vietnam, the concept of the right to privacy is not explicitly stated in the 2013 Constitution, yet its provisions aim to recognize and protect this right within specific bounds. Article 21 declares, “Everyone has the right to inviolability of private life, personal secrets, and family secrets; and the right to protect their honor and reputation”. Additionally, Article 22 stipulates, “Everyone has the right to inviolability of their residence. No one may enter another's residence without their consent”. These articles collectively encompass the right to privacy, including private life, personal and family secrets, honor, reputation, and the inviolability of one's residence. The Constitution also emphasizes the privacy of communication, asserting that no one may unlawfully open, control, or seize another's correspondence, telephone calls, telegrams, and other forms of private communication. The 2015 Civil Code continued this development by replacing

¹⁴ For example, simply typing the keyword “mua bán dữ liệu khách hàng” (buying and selling customer data) on Google immediately yields nearly 205 million results. Searching specifically for “danh sách khách hàng tại TP.HCM” (customer list in Ho Chi Minh City) returns over 102 million results. This type of customer list service is widespread. By spending between 400,000 to 1.5 million VND, anyone can obtain a list of over 1 million people. Some lists are highly specific, such as VIP customers of a bank with savings of over 1 billion VND or customers who have purchased cars from a brand.

¹⁵ Yuval Noah Harari, *Homo Deus a Brief History of Tomorrow* (New York: Harper Collins Publishers, 2015), 445.

the term “right to private secrets” from earlier versions of the Civil Code with “right to private life,” aligning with the spirit of Article 21 of the 2013 Constitution. This change reflects a clear legislative distinction between the “right to privacy” and “private secrets,” recognizing them as interrelated yet distinct concepts^[16]. Recently, the Government issued Decree No. 13/2023/ND-CP on protecting personal data, which includes several provisions related to the right to privacy. This decree protects any information that can identify or recognize an individual, further reinforcing the right to privacy in the context of personal data protection.

2.3. The Right to be Forgotten

The right to be forgotten, particularly relevant in the digital age, has emerged as society transitions into the digital era. It aims at preventing third parties from accessing information that is no longer relevant, outdated, or unnecessary^[17]. For instance, a person who has completed a criminal sentence and has had their record expunged may request that third parties not disclose their past criminal record, facilitating smoother reintegration into society. This right is essential for individuals to manage their digital footprint and maintain control over their personal information in the digital landscape^[18].

This concept gained prominence in 2014 following the ruling by the Court of Justice of the European Union (CJEU) in the case of *Google Spain SL and Google Inc. v. Agencia Española de Protección de Datos (AEPD) and Mario Costeja González (C-131/12)*^[19]. In this landmark case, the CJEU determined that individuals have the right to request search engines such as Google to remove links to their personal information when it is no longer relevant

¹⁶ Ha TTD, “Bàn về Khái Niệm Quyền Riêng Tư Trong Pháp Luật Việt Nam” *Tạp chí Pháp luật và Thực tiễn*, No. 51 (2022): 56.

¹⁷ Personal information that appears on the internet or has been available for a long time can hinder individuals seeking peace and a fresh start. The recognition and protection of this right can bring a sense of relief, as it grants individuals the ability to delete or request the deletion of all related information about them from internet search results and other storage platforms under specific conditions and at particular times.

¹⁸ Nam BTN, “Quyền Được Lãng Quên Từ Thực Tiễn Phán Quyết Trong Phạm vi Liên Minh Châu Âu” *Tạp Chí Nghiên Cứu Lập Pháp*, No. 24 (2020).

¹⁹ Audiencia Nacional Case C-131/12. <https://curia.europa.eu/juris/document/document.jsf?docid=153853&doclang=en>.

or necessary^[20]. This pivotal decision established a precedent for regulations and guidelines concerning the right to be forgotten, particularly within the European Union's General Data Protection Regulation (GDPR) framework, which came into effect on May 25, 2018^[21]. The right to be forgotten is closely related to the right to personal data, as personal data is a fundamental aspect of the right to privacy. Data plays a crucial role in the progress of contemporary society, driven by the development of storage technologies and sensors that enable the collection of vast amounts of data from various aspects of social life. This progress, however, necessitates robust measures to ensure that individuals can exercise control over their personal information and data. Consequently, the term "personal data" has been recognized and has gained prominence in legal scholarship^[22].

One of the most significant cases involving the unauthorized collection and storage of personal data was revealed by Edward Snowden, a contractor at the United States National Security Agency (NSA)^[23]. This case highlighted how technology has enabled various entities, including governments and corporations, to effortlessly collect data and monitor conversations, exchanges, commercial transactions, activities, and individual habits. As a result, individuals can be observed in all their activities, and their data can be collected and processed, allowing others to predict future actions and thereby influence and control individuals' lives. This dynamic exacerbates the power imbalance between individuals and institutions, both public and private, within modern society.

²⁰ PRESS RELEASE on Judgment in Case C-131/12, Google Spain SL, Google Inc. v Agencia Española de Protección de Datos, Mario Costeja González (2014). <https://curia.europa.eu/jcms/upload/docs/application/pdf/2014-05/cp140070en.pdf>.

²¹ General Data Protection Regulation (May 25, 2018). The GDPR provides detailed provisions on the right to be forgotten, allowing individuals to request the deletion of their personal data when it is no longer required for its original purpose, when the individual has withdrawn their consent upon which the data processing was based, or when the data has been processed unlawfully. This right, enshrined in Article 17 of the GDPR, establishes a mechanism for individuals to request the removal of their personal information from databases and search engines, ensuring that outdated, irrelevant, or unnecessary information does not remain accessible indefinitely.

²² Giao VC and Tien LTN, "Bảo vệ Quyền Đối Với Dữ Liệu Cá Nhân Trong Pháp Luật Quốc Tế, Pháp Luật ở Một Số Quốc Gia và Giá Trị Tham Khảo Cho Việt Nam" *Tạp Chí Nghiên Cứu Lập Pháp*, No. 09 (2020).

²³ Jan Albrecht, "Data Protection: 'Snowden Case Showed the US Needs to Deliver on Trustworthy Rules'" *Topics | European Parliament*, 12 January 2016. www.europarl.europa.eu.

In Vietnam, the “right to be forgotten” is not explicitly enshrined as it is under the European Union’s GDPR. However, regulations concerning personal data protection and privacy are progressively gaining importance and development. Although these regulations do not directly address the “right to be forgotten”, they establish a foundation for safeguarding personal information and user privacy. From a legal perspective, the right to freedom of information emerged first, followed by the right to privacy. With the advent of the internet, the need to recognize the right to be forgotten has recently surfaced.

3 | The Relationship Between Privacy and the Right to Freedom of Information and the Right to be Forgotten

3.1. Privacy and the Right to Freedom of Information

The rights to freedom of information and privacy are fundamental human rights that inspired the creation of legal regulations ensuring everyone can enjoy access to information while protecting personal privacy. States are responsible for designing mechanisms that respect, protect, and guarantee these rights^[24]. These two rights are closely interconnected and protected by international conventions and national constitutions. The right to freedom of information is often limited to protecting privacy, and protecting privacy can impact freedom of information^[25]. These rights are frequently described as two sides of the same coin”, functioning as complementary rights that promote individual self-protection and governmental accountability^[26].

²⁴ To date, over 50 countries have enacted laws addressing both rights. See UNESCO, *Access to Information and the Right to Privacy*, Report on Public Access to Information (SDG 16.10.2), (2022), www.unesco.org; and Victoria Lemieux L., “Right to Information Laws: Are They Transparent?” *World Bank Blogs*, 8 September 2014. <https://blogs.worldbank.org>.

²⁵ Binh NT, “Tự Do và Pháp Luật” *Tạp Chí Nghiên Cứu Lập Pháp*, No. 9 (2004).

²⁶ David Banisar, “The Right to Information and Privacy: Balancing Rights and Managing Conflicts” *World Bank Institute Governance Working Paper*, 2011.

However, balancing freedom of information with privacy is often complex. Transparent governance can sometimes conflict with values like individual privacy, leading to potential tensions between public openness and personal confidentiality. Most democratic governments strive for transparency to ensure accountability and foster trust among citizens. On the other hand, even the most transparent governments require some secrecy to function effectively. Certain matters, such as national security, personal data protection, and sensitive diplomatic communications, must remain confidential to protect the state's interests and citizens. With the rise of electronic databases, it has become increasingly difficult for individuals to keep personal details entirely private.

The conflict between privacy rights and freedom of information typically arises in two primary contexts: (1) Protecting personal information versus serving the public interest: An individual may desire to keep their personal information confidential, yet that information could be vital for the public (e.g., details about the criminal activities); (2) The right to request the deletion of information versus the preservation of historical records (e.g. an individual may wish to have outdated personal information removed, but that information might hold significant historical or journalistic value)^[27].

3.2. The Right to Freedom of Information and the Right to be Forgotten

The relationship between the right to freedom of information and the right to be forgotten is inherently complex and often presents conflicts. Both rights hold significant importance and must be protected, but their implementation requires careful consideration to ensure that one does not unduly harm the other. Conflicts typically arise when balancing personal data protection against public interests. For instance, an individual might request the deletion of outdated personal information or to keep certain information confidential, which may conflict with the public's interest in transparency and access to historically significant information. While the individual desires privacy, the public might need access to this information for community protection, thus leading to a conflict between

²⁷ Dung TTT, *Quyền Tiếp Cận Thông Tin Của Công Dân ở Việt Nam*. Nhà xuất bản Đại học Quốc gia thành phố Hồ Chí Minh. 2015.

privacy and public interest. Therefore, legislative bodies must find ways to balance protecting individual privacy rights while maintaining freedom of information. This balance often requires precise legal mechanisms and standards to determine when and how the right to be forgotten can be exercised without excessively infringing on the right to information.

3.3. Privacy and the Right to be Forgotten

The right to be forgotten serves as an extension of privacy rights, playing a critical role in allowing individuals to assert their dignity, autonomy, and control over previously public information. This relationship between privacy and the right to be forgotten involves two critical aspects. Firstly, both rights involve a degree of control over personal data. Secondly, the right to be forgotten focuses on removing personal information from online spaces when it is no longer necessary or relevant. This ensures that outdated or irrelevant information does not continue to impact an individual's privacy or reputation, a key aspect of their dignity and autonomy.

While privacy encompasses the protection of information from unauthorized access, the right to be forgotten enables individuals to request the deletion of information that no longer serves a legitimate purpose. Privacy rights generally have more well-defined legal protections compared to the right to be forgotten. The latter is particularly challenging to enforce in the digital age, where information is easily shared and stored across various platforms. Identifying which information should be deleted based on the data subject's request can be complex, as information is often duplicated and stored in multiple locations.

4 | The Protection of Privacy, the Right to Freedom of Information, and the Right to be Forgotten under Vietnamese Laws

4.1. Codified laws

Recent Vietnamese legislation outlines sanctions for privacy violations through criminal prosecution and administrative penalties. Under the Criminal Code, offenders may face charges for crimes such as insulting another person (Article 155), violating the secrecy of private communications (Article 159, requiring prior disciplinary or administrative action), and illegally using information on computer and telecommunications networks (Article 288). Also, administrative penalties under Decree 15/2020/ND-CP include fines ranging from 10 to 15 million VND (approximately \$430 to \$650 USD) for individuals and 10 to 20 million VND (approximately \$430 to \$860 USD) for organizations, with mandatory removal of disclosed information. However, the regulation does not account for the extent of information dissemination. Thus, in high-profile cases involving celebrities or widely known organizations, the prescribed fines may not be proportional to the severity of the violation. This can result in a situation where individuals or organizations can afford to pay the fines without facing significant consequences for their actions. This lack of proportionality in penalties diminishes the deterrent effect, potentially allowing further violations.

The legal framework for addressing privacy violations in Vietnam is comprehensive. However, effective enforcement requires significant technical resources, time, and commitment from competent authorities. Often, the damage has already been severe when penalties are imposed. Addressing privacy violations on social media is particularly challenging, especially with anonymous accounts or those registered in other countries. The complex nature of digital privacy violations necessitates rapid and robust responses to mitigate harm effectively. For accounts registered in Vietnam, authorities should act decisively to set a strong precedent, creating a culture of respect and deterrence for the law. Swift and strict enforcement can clearly warn potential violators, highlighting the severe consequences of privacy infringements. For accounts registered in other countries, Vietnamese authorities should promptly assist victims

by engaging with international media companies to remove content that violates privacy.

In 2022, the Standing Committee of the National Assembly issued an ordinance on administrative penalties for obstructing judicial activities, which sparked significant debate before approval. This ordinance includes fines ranging from 7 to 15 million VND (approximately \$300 to \$650 USD) for recording audio or video of court proceedings without consent in civil or administrative cases. Penalties also include the confiscation of recording devices and the seizure of unlawfully obtained materials and profits. This stringent regulation has garnered support for protecting the privacy of trial participants and ensuring that judges and court officials can perform their duties without media distractions. This detailed legal framework, while robust, highlights the challenges and necessary steps for effectively protecting privacy in the digital age. The Vietnamese approach demonstrates a commitment to balancing privacy protection with the need for transparency and accountability in both national and international contexts.

In essence, personal data rights are integral to the right to privacy and essential for individuals to assert their dignity, autonomy, and identity. The sophistication of information technology in collecting, analyzing, and disseminating personal data underscores the urgent need for robust protection of personal data and privacy. Therefore, policies and legal frameworks must safeguard personal data against violations by any entity, including public authorities and private institutions. The protection of personal data rights is regulated under Decree 15/2020/ND-CP (amended by Decree 14/2020/ND-CP) which stipulates penalties for the following violations:

- i. Collecting personal information without consent regarding the scope and purpose of the collection and use of such information or providing personal information to third parties against the subject's request to cease.
- ii. Misusing personal information without consent, including providing, sharing, or distributing collected personal information to third parties without consent and unlawfully collecting, using, distributing, or commercializing others' personal information. Violators must also delete personal information obtained through such means.
- iii. Failing to delete stored personal information after the intended use or retention period has expired.

This framework ensures the protection of personal data, emphasizing the importance of consent and the lawful handling of personal information.

Regarding the right to be forgotten, Vietnam currently does not have direct regulations specifically governing this right. However, a positive development can be seen in Decree No. 13/2023/ND-CP on the protection of personal data, which includes certain provisions related to the right to be forgotten. This Decree outlines scenarios in which personal data can be published without consent, as well as cases where data must be deleted upon request, granting data subjects the right to request the deletion of their personal data and stipulating the timeline for data deletion upon the death of the data subject.

Specifically, according to Clause 5, Article 9 of Decree 13/2023/ND-CP, data subjects are given the right to request the deletion of their personal data. The Decree broadly defines personal data as information in various forms, such as symbols, text, numbers, images, sounds, or other similar formats in electronic environments, which are associated with or help identify a specific individual (Clause 1, Article 2). This definition encompasses both basic personal data^[28], and sensitive personal data^[29],

²⁸ Basic personal data includes: Full name, other names (if any); Date of birth; date of death or date of disappearance; Gender; Place of birth, place of birth registration, permanent residence, temporary residence, current residence, place of origin, contact address; Nationality; Personal photographs; Phone number, ID card number, personal identification number, passport number, driver's license number, vehicle registration plate number, personal tax code, social insurance number, health insurance card number; Marital status; Information on family relationships (parents, children); Information on individual bank accounts; personal data reflecting activities and history of activities in cyberspace (Clause 3 of Article 2 of Decree 13/2023/ND-CP).

²⁹ Sensitive personal data refers to personal data closely linked to an individual's privacy, which, if breached, could directly affect the individual's rights and lawful interests. This includes: Political views, religious beliefs; Health status and private life details as recorded in medical records, excluding blood type information; Information related to racial or ethnic origin; Information regarding inherited or acquired genetic traits; Information on individual physical or biological characteristics; Information on an individual's sexual life or sexual orientation; Data on criminal records or criminal behavior collected and stored by law enforcement agencies; Customer information of credit institutions, foreign bank branches, payment intermediary service providers, and other authorized organizations, including: Customer identification information as stipulated by law, account information, deposit information, property deposit information, transaction information, and information on organizations or individuals who are guarantors at credit institutions, bank branches, or payment intermediary

indicating a comprehensive approach to data protection. However, the right to request the deletion of personal data in cyberspace is subject to several important limitations as outlined in Clause 2, Article 16 of this Decree. These limitations include circumstances where the deletion of data is prohibited by law, when the personal data is processed by state agencies for purposes related to their legally mandated activities, or when the data has been made public in accordance with legal regulations. Additionally, this right does not apply when the data is processed for legal purposes, scientific research, or statistical purposes, or in cases related to national security, public order, major disasters, or dangerous epidemics. Moreover, in emergency situations that pose a threat to life, health, or safety, either to the data subject or to others, the right to data deletion is also restricted.

These legal provisions reflect a balanced approach to the right to be forgotten, acknowledging the need to protect individual privacy while also considering the broader public interest and legal obligations. The inclusion of these provisions within Vietnam's legal framework marks a significant step towards integrating modern data protection principles, while also recognizing the complexities of implementing such rights in practice.

4.1. Relevant cases

In Vietnam, the intersection of the right to freedom of information and privacy has led to several significant cases that highlight the complexities involved in balancing these rights.

Freedom of Information

As of June 2023, four notable lawsuits have been brought to trial in Vietnam regarding the right to access information:

- i. Two cases in Da Nang city, with one in 2019 (Judgment of Supreme People Court at Da Nang city, No. 199/2019/HC-PT)^[30] and another in

service providers; Location data of individuals determined through positioning services; and other personal data as defined by law as specific and requiring necessary security measures (Clause 4 of Article 2 of Decree 13/2023/ND-CP).

³⁰ The appeal judgment No.199/2019/HC-PT dated December 27, 2019 re: "Request on cancellation of administrative decision" issued by Supreme People Court at Da Nang city.

2021 (Judgment of Supreme People Court at Da Nang city, No. 02/2021/HC-PT)^[31]. Both cases centered on requests for information related to the verification reports of inspections and the resolution of denunciations.

- ii. A case in Can Tho city in 2020 (Judgment of Can Tho city's People Court No. 42/2020/HC-ST)^[32], which dealt with the denial of a request for land planning information.
- iii. A case in Khanh Hoa province in 2022 (Judgment of Khanh Hoa Province's People Court No. 13/2020/HC-TC) concerning the refusal to provide information on an investment registration certificate for a piece of land acquired by the petitioner^[33].

These cases illustrate the challenges individuals face when attempting to access information held by state agencies. Notably, these lawsuits have been initiated by individuals rather than organizations, indicating a potential gap in the enforcement or understanding of access to information rights among larger entities^[34].

³¹ The appeal judgment No.02/2021/HC-PT dated July 30, 2021 re: "Complaints on the refusal to provide information, cancellation of decision on complaint address" issued by Supreme People Court at Da Nang city.

³² The judgment No.42/2020/HC-ST dated November 25, 2020 issued by Can Tho city's People Court.

³³ The judgment No.13/2022/HC-TC dated April 20, 2022 issued by Khanh Hoa Province's People Court.

³⁴ Dung TTT and Dung VKH, "The Right to Access Information: Perspectives from Lawsuits of Refusal to Information Supply in Selected Countries and Vietnam" *Kutafin Law Review*, No. 2 (2024): 386-410. The Law on Access to Information became effective on 1 July 2018. Despite certain inherent shortcomings both objectively and subjectively encountered during its implementation, Vietnamese citizens have begun utilizing this legal framework to solicit information. In instances where requests are denied, individuals have resorted to lodging complaints or initiating administrative lawsuits. As of 15 May 2023, Vietnamese courts have overseen four administrative cases directly linked to the right to access information. This study centers on these four administrative cases, scrutinizes Vietnamese regulatory statutes concerning information access, and suggests avenues for improvement to ensure the practical realization of the right to access information, which inherently embodies the protection of rights. Employing analytical legal research methodology, this paper analyzes pertinent legal provisions governing information access. Additionally, research methodology of case study are conducted, such as analyze and compare judgments pertaining to information denial in various selected countries and Vietnam. Ultimately, an analytical approach rooted in the

Privacy

In Vietnam, there have been numerous cases of administrative sanctions related to privacy violations. One such case involved Mr. Doan Huu T. (25 years old, residing in Tra Vinh city), who used his Facebook account “Doan Huu Tai” to post information about Mr. D., who was suspected of having contact with a COVID-19 patient and was working at Tra Vinh University. Mr. D. argued that the post was made without his consent and violated his personal privacy. Consequently, Mr. D. filed a complaint with the Tra Vinh Department of Information and Communications, requesting an investigation and legal action against the individual responsible for disclosing and disseminating his personal information. Mr. T. admitted to the violation. On March 25, 2020, the Chief Inspector of the Tra Vinh Department of Information and Communications issued an administrative fine against Mr. T. under Point e, Clause 3, Article 66 of Decree No. 174/2013/ND-CP, which provides for administrative sanctions in the fields of postal services, telecommunications, information technology, and radio frequencies, for the act of “collecting and using another person’s information without their consent”. Mr. Doan Huu T. was fined 7.5 million VND^[35]. In another case in May 2024, Mr. N. (58 years old, residing in Ha Dong district, Hanoi), a landlord, was found to have installed a camera in the bathroom of a rented apartment occupied by a female student, L.P.N. Mr. N. was fined 12.5 million VND under Decree No. 15/2020/ND-CP for illegally collecting personal information, reflecting an increase in penalties compared to previous cases^[36].

Additionally, a well-known civil case related to both freedom of the press and privacy rights occurred in October 1996. The Youth Publishing House and the Tuoi Tre newspaper jointly published a book titled *Court Chronicles* by journalist Thuy Cuc, which included a piece called *The Nest*. This article was a report on the public divorce trial of Mr. Duc, which was held at the Phu Nhuan District People’s Court on December 15, 1994. In the article, Mr. Duc’s name was abbreviated as T.T.D. Mr. Duc then claimed that *The Nest* disclosed private and personal details about him, including

Vietnamese legal theory and law is employed to draw conclusions and provide recommendations.”

³⁵ Xuan Thao, “Phạt 7,5 triệu đồng về hành vi đăng thông tin xâm phạm quyền riêng tư, cá nhân” *Công An Trà Vinh*, 26 March 2020. <https://congan.travinh.gov.vn>.

³⁶ Truong Nguyen, “Vụ Lắp Camera Quay Lén Trong Phòng Tắm Nữ Sinh: Phạt Chủ Nhà Trọ 12,5 Triệu Đồng” *Thanh Niên*, 26 June 2024. <https://thanhnien.vn>.

the past of his ex-wife, Mrs. N.T.T., and his paternity rights over their child. He argued that the article also contained personal opinions that insulted his private life. As a result, Mr. Duc filed a lawsuit requesting a ban on the reprint and circulation of the book, a public apology in the newspaper, and compensation for emotional distress. In September 2006, the court ruled in favor of Mr. Duc^[37]. The three defendants appealed, but the appellate court concluded that journalist Thuy Cuc, who had followed the divorce proceedings of Mr. Duc and his wife, had a deep understanding of their private life. Consequently, the book *The Nest*, which described the details of the trial and provided personal opinions about the marriage, was deemed to have violated the legally protected right to privacy. The court noted that while the public trial was within the court's jurisdiction as per the law, this did not grant the right to disclose the private lives of the individuals involved. Therefore, publicly revealing their private affairs in the media without their consent was a legal violation. As a result, the appellate court ordered the three defendants to publish a correction and apology to Mr. Duc in one issue of Tuoi Tre newspaper and to compensate him as follows: Tuoi Tre newspaper was ordered to pay 250,000 VND, the Youth Publishing House 500,000 VND, and journalist Thuy Cuc 1 million VND. Additionally, *The Nest* was banned from circulation upon reprinting.

Right to be Forgotten

While the right to be forgotten is not explicitly recognized in Vietnamese law, there is a growing awareness and demand for such a right, particularly among public figures who wish to remove certain information from the public domain. The absence of legal provisions for this right poses challenges for individuals seeking to control their digital footprint, reflecting a broader global debate on how best to balance the permanence of information with the evolving nature of privacy.

³⁷ LN, “Ký sự pháp đình’ thua kiện” *Thanh Niên*, 21 September 2006, sec. Pháp luật. <https://thanhnien.vn>.

5 | Conclusion and Recommendations for Vietnam

In the rapid development of information technology, every nation must find a balanced approach to harmonize the right to freedom of information, privacy, and the right to be forgotten. These rights often conflict to protect both public interests and individual rights. Formulating a clear framework to delineate these rights is particularly challenging due to the subjective and qualitative nature of the criteria used to classify information. Determining what information is private and what constitutes personal data and assessing whether such information serves the public interest while respecting individual rights is a complex global issue. The rapid advancement of technology further complicates this task, as it continuously reshapes the landscape of these rights, making legal frameworks less stable and constantly in need of adaptation, posing significant challenges for lawmakers. For Vietnam, the authors recommend the following:

Firstly, it is imperative to enact a Privacy Protection Law that balances the right to freedom of information, privacy rights, and the right to be forgotten. This law should provide a clear legal basis for defining these rights. Such legislation would align with Article 21 of the 2013 Constitution, ensuring the safety and confidentiality of private life and personal and family secrets. Additionally, sanctions for violations should be quantified based on the extent of information dissemination. Heavier penalties for more widespread violations should be imposed to deter future offenses effectively. There is also an urgent need to issue a Decree on Personal Data Protection, which should eventually be developed into a comprehensive law. Currently, regulations on personal data protection in Vietnam are dispersed across various legal documents, leading to overlaps, inconsistencies, and difficulties in law enforcement^[38].

Thirdly, to mitigate conflicts between the “right to be forgotten” and the right to access information, it is crucial to effectively establish guiding principles that balance these two rights. In cases where disclosed events are of current and significant public interest, the “right to be forgotten” should defer to the right to access information as long as the information remains pertinent to ongoing public discourse. Here, the public interest is closely linked to the credibility and timeliness of the information.

³⁸ The European Union has established a comprehensive legal framework, and many countries within the region have enacted their own specific laws to safeguard privacy rights, with a particular emphasis on the protection of personal data.

However, as time progresses and the information's relevance to public interest diminishes, meaning that the public's need to know no longer substantiates its continued disclosure, the "right to be forgotten" should take precedence, allowing individuals to reclaim privacy over outdated information. This nuanced approach ensures that the public's right to access vital, newsworthy information is preserved while safeguarding individual privacy by facilitating the removal of information that has lost its public relevance. Such a framework aligns these potentially conflicting rights within a cohesive legal structure, respecting individual and societal interests as information demands evolve. This balance not only underscores the importance of transparency in the public sphere but also reinforces the need for privacy protections in a way that responds to the dynamic interplay between information access and personal privacy in modern society.

Fourthly, penalties for violations should be revised and strengthened. As previously analyzed, current sanctions for privacy violations in Vietnam are too lenient compared to those in Europe and other countries. They do not reflect the severity of the violations and lack deterrent effects. Therefore, the state should amend relevant legal documents to impose stricter sanctions on agencies, organizations, enterprises, and individuals violating privacy rights, particularly in administrative and civil contexts.

By implementing these recommendations, Vietnam can better protect individual privacy rights while accommodating the evolving landscape of information technology. This approach will foster a legal environment that balances personal rights with public interests, ensuring comprehensive protection and effective enforcement.

Bibliography

Albrecht Jan, "Data Protection: 'Snowden Case Showed the US Needs to Deliver on Trustworthy Rules'" *Topics European Parliament*, 12 January 2016.

<https://www.europarl.europa.eu/topics/en/article/20161128STO53434/data-protection-snowden-case-showed-us-needs-to-deliver-on-trustworthy-rules>.

Banisar David, "The Right to Information and Privacy: Balancing Rights and Managing Conflicts" *World Bank Institute Governance Working Paper*, (2011).

Bennett Colin J., "In Defense of Privacy: The Concept and the Regime" *Surveillance & Society*, No. 4 (2011): 485-496.

- BTN Nam, “Quyền Được Lãng Quên Từ Thực Tiễn Phán Quyết Trong Phạm vi Liên Minh Châu Âu” *Tạp Chí Nghiên Cứu Lập Pháp*, No. 24 (2020).
- Carnoy Martin, *The New Global Economy in the Information Age: Reflections on Our Changing World*. Penn State Press. 1993.
- Davies Simon, *Big Brother: Britain’s Web of Surveillance and the New Technological Order*. London: Pan Books, 1996.
- Hanna Nagy, *The Information Technology Revolution and Economic Development*. World Bank Publications, 1991.
- Lemieux L., Victoria, “Right to Information Laws: Are They Transparent?” *World Bank Blogs*, 8 September 2014. <https://blogs.worldbank.org/en/governance/right-information-laws-are-they-transparent>.
- LN, “Ký sự pháp đình’ thua kiện” *Thanh Niên*, 21 September 21, 2006, sec. Pháp luật. <https://thanhnien.vn/ky-su-phap-dinh-thua-kien-185146080.htm>.
- “Báo VietnamNet” *VietNamNet News*. <https://vietnamnet.vn/en/vietnam-changes-rapidly-after-25-years-of-internet-connection-2088999.html>.
- Nguyen Truong, “Vụ Lắp Camera Quay Lén Trong Phòng Tắm Nữ Sinh: Phạt Chủ Nhà Trọ 12,5 Triệu Đồng” *Thanh Niên*, 26 June 2024. <https://thanhnien.vn/vu-lap-camera-quay-len-trong-phong-tam-nu-sinh-phat-chu-nha-tro-125-trieu-dong-185240626141030271.htm>.
- Noah Harari Yuval, *Homo Deus a Brief History of Tomorrow*. New York: Harper Collins Publishers, 2015.
- NT, Binh, “Tự Do và Pháp Luật” *Tạp Chí Nghiên Cứu Lập Pháp*, No. 9 (2004).
- Simitis Spiros, “Reviewing Privacy in an Information Society” *University of Pennsylvania Law Review*, No. 3 (1987): 707-746.
- TTD Ha, “Bàn về Khái Niệm Quyền Riêng Tư Trong Pháp Luật Việt Nam” *TẠP CHÍ PHÁP LUẬT VÀ THỰC TIỄN*, No. 51 (2022).
- TTT Dung, “Quyền riêng tư trong thời đại công nghệ thông tin” *Tạp chí Nghiên cứu Lập pháp*, No. 9 (2012).
- TTT Dung, *Quyền Tiếp Cận Thông Tin Của Công Dân ở Việt Nam*. Nhà xuất bản Đại học Quốc gia thành phố Hồ Chí Minh. 2015.
- TTT Dung, Dung VKH, “The Right to Access Information: Perspectives from Lawsuits of Refusal to Information Supply in Selected Countries and Vietnam” *Kutafin Law Review* No. 2 (2024): 386-410.
- VC Giao, Tien LTN, “Bảo vệ Quyền Đối Với Dữ Liệu Cá Nhân Trong Pháp Luật Quốc Tế, Pháp Luật ở Một Số Quốc Gia và Giá Trị Tham Khảo Cho Việt Nam” *Tạp Chí Nghiên Cứu Lập Pháp*, No. 09 (2020).
- Werro Franz, *The Right To Be Forgotten: A Comparative Study of the Emergent Right’s Evolution and Application in Europe, the Americas, and Asia*. Springer Nature. 2020.

Xuan Thao, “Phạt 7,5 triệu đồng về hành vi đăng thông tin xâm phạm quyền riêng tư, cá nhân” *Công An Trà Vinh*, 26 March 2020. <https://congan.travinh.gov.vn/catv/ch6/1609-Phat-75-trieu-dong-ve-hanh-vi--dang-thong-tin-xam-pham-quyen-rieng-tu-ca-nhan.html>.



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