

President Biden Prepares Executive Order to Prohibit Foreign Adversaries' Access to US Data

Article By:

Dominic Braithwaite

David Stewart

Ludmilla L. Kasulke

Charmian Aw

According to reports originally from Bloomberg News, President Joe Biden is preparing to issue an executive order (EO) aimed at prohibiting US adversaries from accessing US personal data. While the draft is subject to change, the draft EO reportedly targets “highly sensitive” data, including genetic and location information, and would bar foreign adversaries from obtaining this data through legal means such as intermediaries, data brokers, third-party vendors, employment agreements, or investment agreements. Further, the EO would reportedly require that entities owned, controlled, or operated by countries of concern turn over data to the US government when requested. Significantly, the draft EO would restrict US entities and individuals from conducting data transactions that would provide adversarial countries with government-related or sensitive personal data, in addition to data that could jeopardize US national security.

The draft EO identifies artificial intelligence (AI) as a potential tool to enhance data mining and the tracking and profiling of US individuals and federal employees. It notes that “countries of concern can use artificial intelligence to target US persons for espionage or blackmail by, for example, recognizing patterns across multiple unrelated datasets to identify potential individuals whose links to the Federal Government would be otherwise obscured in a single dataset.” The EO is also likely to make clear that the Biden Administration intends to implement any resulting regulations in a fashion that minimizes “disruption to commercial activity” and maintains US cooperation on trade, science, and economic issues with its partners.

The EO would advance federal efforts to create a comprehensive US data privacy and security standard, which, are currently left to disparate state laws and regulations. Because Congress has stalled on passing comprehensive data privacy legislation like the *American Data Privacy and Protection Act*, the Biden Administration may feel compelled to respond to what it sees as grave national security threat in failing to regulate this data. In particular, the draft EO's reported focus on protecting US genetic data aligns with positions supported by key Members of the House Select

China Committee and other lawmakers concerned with Chinese access to US data. Likewise, the Office of the Director of National Intelligence alleged in 2021 that China “has collected large health-care data sets from the US and nations around the globe, through both legal and illegal means.”

The EO could also push forward Congressional negotiations on data privacy legislation. Even on its own, any presidential action will likely have widespread impacts on entities operating in the United States and around the world.

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