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## White House “Big Data” Report Calls for New Privacy, Data Breach Legislation, Renewed Attention to Discrimination

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The White House this afternoon released a much anticipated report on “big data,” which represents the results of a 90-day review the President asked Counselor to the President John Podesta to conduct on his behalf. The review covers a variety of important topics, ranging from the Obama Administration’s open data initiative, to public sector data management in areas such as health care, education, homeland security, and law enforcement, to private sector uses of data in the commercial context. The full report is available [here](#). A related fact sheet and blog post are available [here](#) and [here](#).

Of particular note, the report:

- renews the call for comprehensive privacy legislation based on the “Consumer Privacy Bill of Rights” model;
- calls for Congress to pass national data breach legislation;
- proposes to extend privacy protections to non-U.S. persons;
- proposes to ensure that data collected on students in school is used only for educational purposes;
- calls for expanded technical expertise to stop discrimination in areas such as housing and employment; and
- calls for reforms to the Electronic Communications Privacy Act (ECPA).

### Background

The report describes itself as primarily a “scoping exercise” designed (1) to define what is new about emerging technologies; (2) to explore how big data affects public policy and particularly privacy law; (3) to examine the challenges big data creates for the principles underlying the Administration’s Consumer Privacy Bill of Rights approach; and (4) to lay out an agenda for government leadership on issues related to big data.

The report draws on written comments and statements from public hearings across the country with academics, privacy advocates, civil rights groups, tech companies, advertisers, and others. The

report is co-signed by Secretary of Commerce Penny Pritzker, Secretary of Energy Ernest Moniz, Director of the Office of Science and Technology Policy John Holdren, and National Economic Council Chair Jeff Zients. The President's Council of Advisors on Science and Technology (PCAST) is undertaking in parallel an effort to research the technological trends underpinning big data.

## Implications

1. While many of the report's recommendations—such as the call for Consumer Privacy Bill of Rights legislation and national data breach legislation—are familiar from previous Administration statements, the report also signals some new directions. In particular, the report's focus on the ways in which big data can be used to discriminate in housing and employment suggests an important new area of focus for the Obama Administration. We expect this aspect of the report to prompt follow-up from a number of agencies including the Civil Rights Division within the Department of Justice, the Consumer Financial Protection Bureau (CFPB) and the Department of Housing and Urban Development.
2. The Administration has previously critiqued various aspects of ECPA such as the distinction it draws between emails held in storage more or less than 180 days, but this report represents a clearer call for reform than the Obama Administration has made in the past, and it is likely to give a boost to reform efforts.
3. Moreover, the mere fact of a comprehensive White House report on big data suggests that the Administration is trying to move away from the defensive posture it has taken in the aftermath of the Snowden revelations about National Security Agency surveillance and back into a policymaking posture with respect to privacy and data security that extends beyond national security concerns.

WilmerHale's Privacy and Information Security Group will be following up on specific issues raised by the report in the coming days and would be happy to discuss with you more particularized implications for your company or industry.

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## Authors



**Jamie Gorelick**

**PARTNER**

Chair, Regulatory and  
Government Affairs Department

✉ [jamie.gorelick@wilmerhale.com](mailto:jamie.gorelick@wilmerhale.com)

☎ +1 202 663 6500