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## **Transparency and Managing Public Records**

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# Agenda

- Managing Public Records
  - E-Discovery Strategies
- Transparency
  - Sample Use Cases

# Why E-Discovery?

- **Changes to Federal Rules (12/06)**
- **“Most significant change to litigation process in 40 years”**
- **Changes have wide reach**



# Climate of Change:



- **General Recognition of “Digital Birth”**

- “Today it is black letter law that computerized data is discoverable if relevant.”

*Anti-Monopoly, Inc. v. Hasbro, Inc., No. 94CIV2120, 1995 U.S. Dist. LEXIS 16355 (S.D.N.Y. 1995)*

- **Difficulty in Discovering?**

- **Electronic Storage = Electronic Retrieval**

*Kaufman v. Kinko’s Inc., 2002 WL 32123851 (Del. Ch. 2002)*

- **Expense in Producing?**

- **Millions Mean Nothing!**

*Toshiba v. Superior Court of Santa Clara County, 124 Cal. App. 4<sup>th</sup> 72 (Cal App. 2004).*

- **Spoliation of Evidence Is a Fatal Mistake!**

- That’s **Billions** with a “B”

*Coleman Holdings v. Morgan Stanley & Co., No. CA 003-5045AI, 2005 WL 674885, at \*9-10 (Fla. Cir. Ct. March 23, 2005).*

# Zubulake v. UBS Warburg:



- **ESI (Electronically Stored Information)**
- **Sanctions**
- **The “Adverse Inference”**
- **“Stick Up” Litigation**

# Other Nastiness:

- **Rule 34(a) – “Sneak a Peek” Rule**
  - **Compartmentalize & limit exposure**
- **Rule 33(d) – Can answer with ESI**
  - **HAND OUT DATA?!?**
  - **Privilege!**
- **Rule 26(f) – “Meet & Confer”**
  - **Discuss preparation of relevant info**
  - **Production format**
  - **Claims of privilege & protection**
  - **Some component of IT staff on hand**



# Key Question...

*“Why aren’t we doing, hearing, seeing more about this?”*

- **Zubulake v. UBS Warburg**
- **Anti-Monopoly v. Hasbro**
- **Kaufman v. Kinko’s**
- **Toshiba v. Sup. Ct. of Santa Clara**
- **Coleman v. Morgan Stanley**



# What's the Net?

## 3 Practical Requirements for Every Shop:

- **Complete Enterprise Search or Awareness**
- **Even & Demonstrable Retention**
- **Demonstrable Freeze/Hold Capability**

*Be Proactive Not Reactive*

# Being Pragmatic

## Practical Approaches for Discovery

- Policy
- Procedure
- Technology



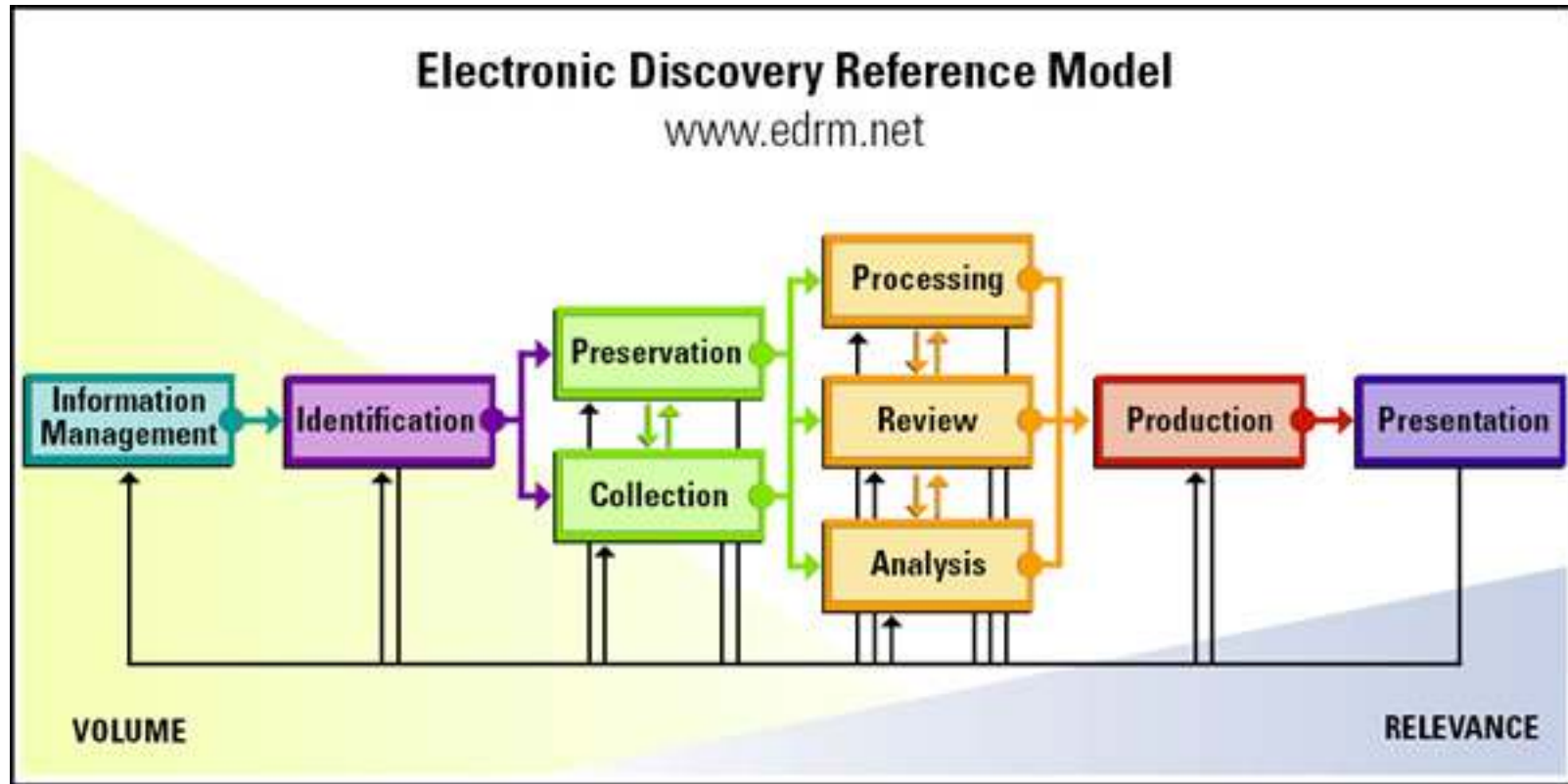
# Typical Problem Areas

- **E-Mail**
- **Network Drives/Storage**
- **“Spreadfarms”/Local**
- **Troublesome 0’s & 1’s**



# Formulating a Strategy

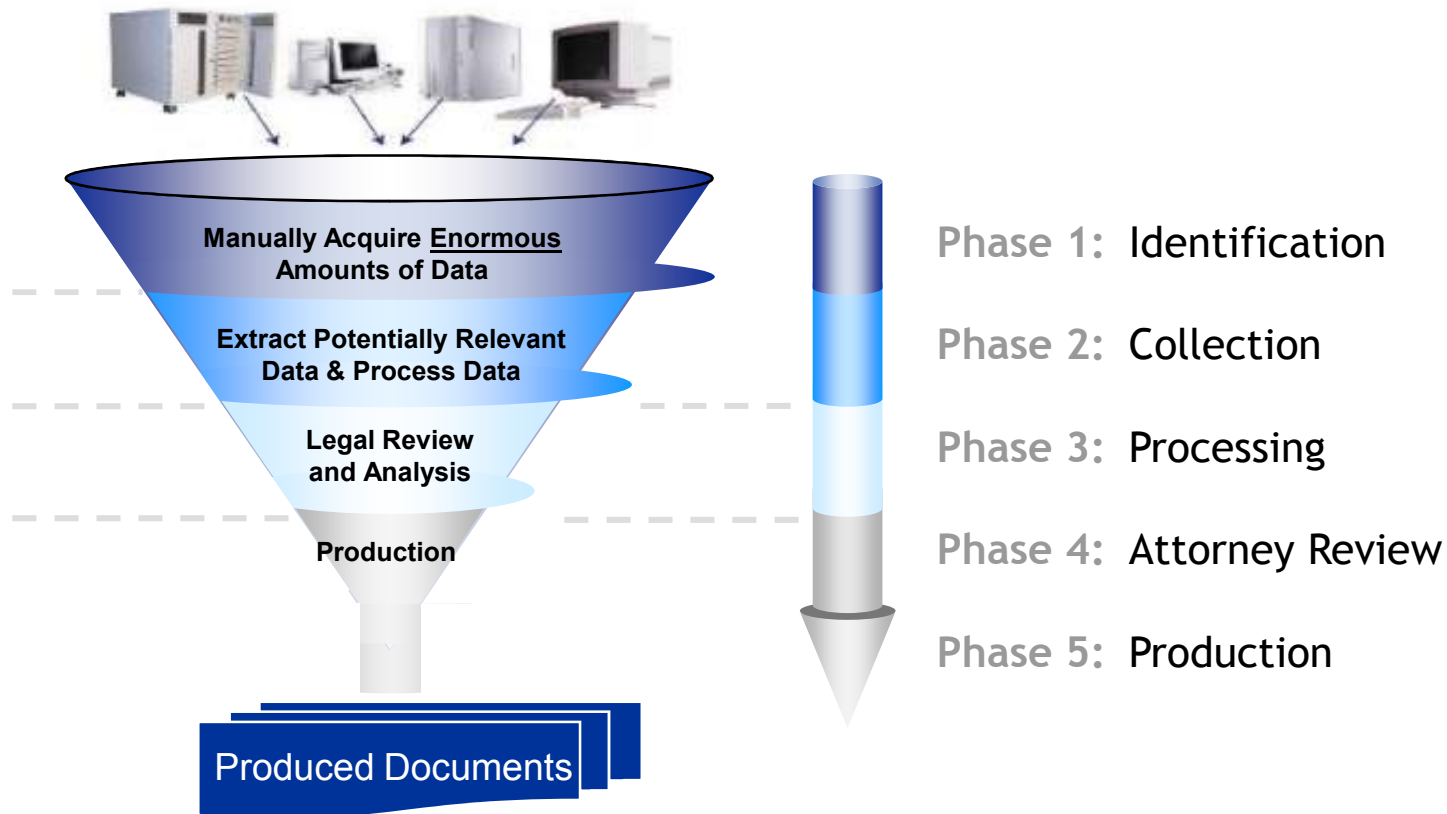
## *Best Practices Resources*



Also [www.thesedonaconference.org](http://www.thesedonaconference.org)

# Formulating a Strategy:

## *Reduce The Pool Quickly & Efficiently*



# Formulating a Strategy

## *Policy Considerations*

- **1<sup>st</sup> Thing Auditors/Counsel Request**
- **State Retention Laws**
- **General Counsel/Legal Relevance**



# Formulating a Strategy

## *Procedure Considerations*

- **Data and Content Audit**
- **Taxonomy/Classification Schema**
- **File Plan/Retention**



# Formulating a Strategy

## *Developing a technology roadmap:*

• **Step 1:** Provide an enterprise content management (ECM) infrastructure for content and applications

- Establish an ECM standard for your organization

• **Step 2:** Manage all content stores, including legacy systems

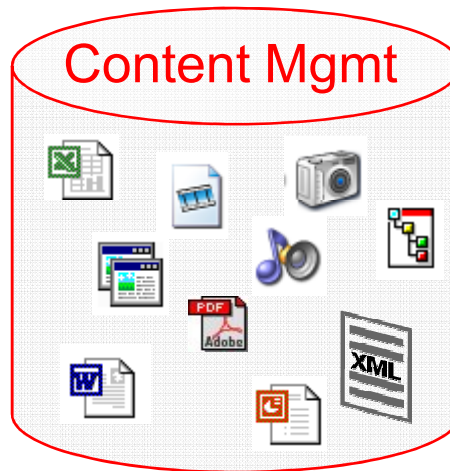
- Uniform policies across content and data
- Control information ‘in-place’, where it lives
- Critical to encompassing ECM strategy

• **Step 3:** Secure information beyond managed environments

- Secure content regardless of location
- Available from, but not dependent on, ECM infrastructure

# Consolidation:

## Bring Critical Content into a Managed Environment



# Consolidation:

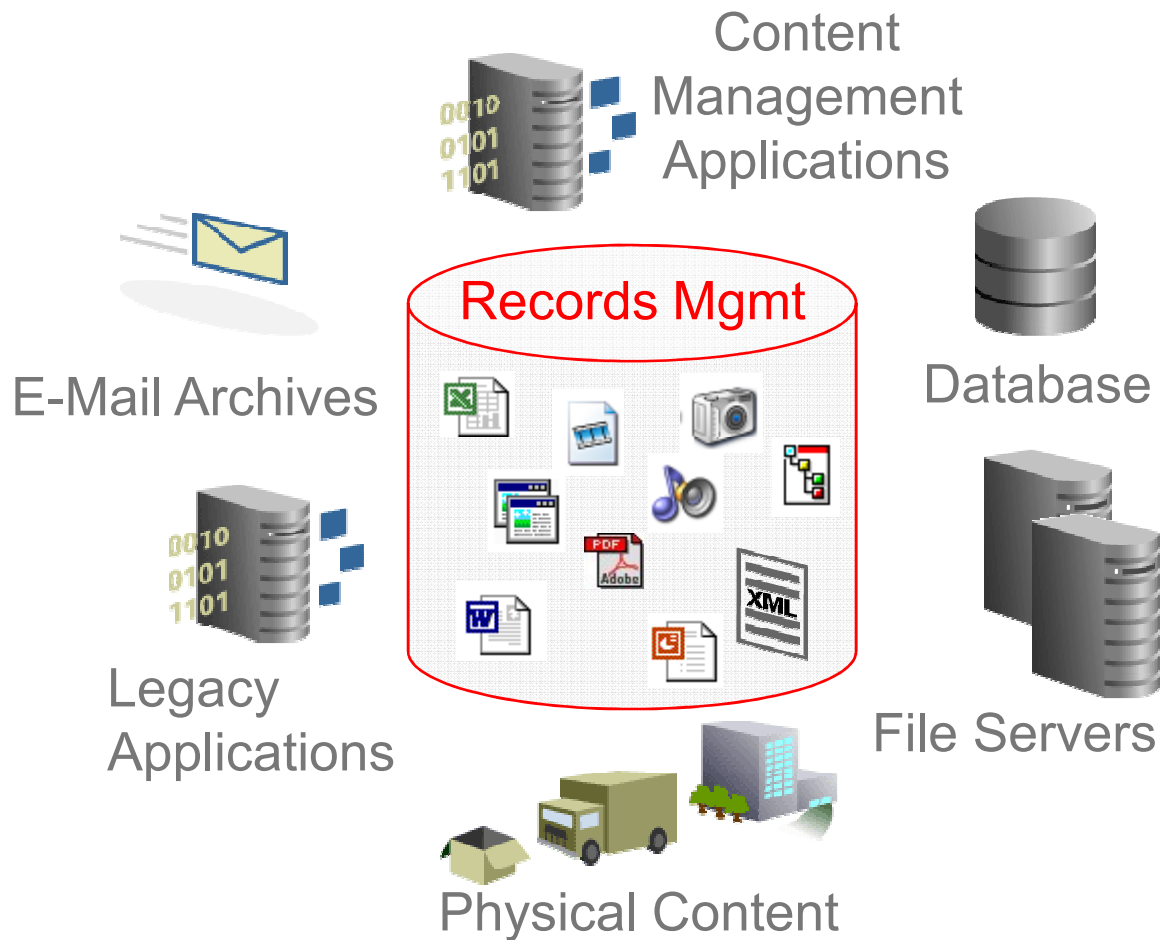
## Enterprise content services

- Move critical content to your strategic ECM infrastructure
- Consider all content types
- Ensure ECM standard meets all your infrastructure needs
- Provide SOA capabilities within middleware layer

### Why?

- Developing an ECM standard...
  - Reduces integration and administration costs
  - Minimizes risk
  - Eliminate redundant steps
  - Enables content to be shared more efficiently

# Federation: Management Across All Content Stores, Including Legacy Applications



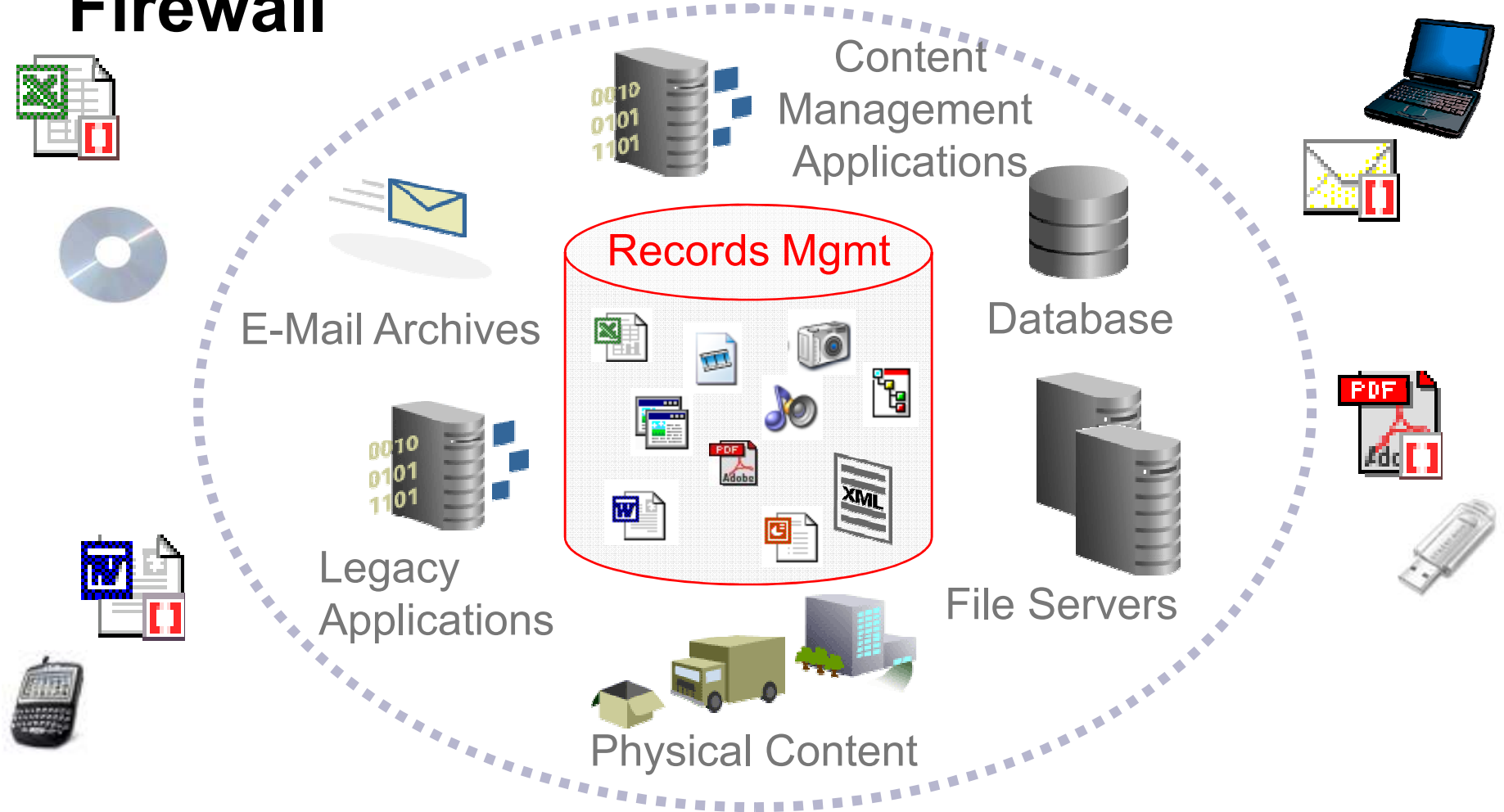
# Federation: With Enterprise Records & Retention Management and Search

- Federated approach
- Centralize policies, manage in-place
  - Uniform implementation
  - Understood by users
  - No disruption to business
- Control heterogeneous infrastructure
  - Maximize existing investment
  - Reduce clutter and storage costs
  - Minimize risk

## Why?

- **Reality: mixed environments**
- **Not all content will move to strategic ECM infrastructure**
  - Resource constraints
  - ROI of the move
  - Existing integrations in place
  - Critical business needs

# External Security: Manage Information Beyond Your Firewall



# External Security:

## Manage access beyond the enterprise

- Secure and track content everywhere it goes
  - Only authorized users can open and/or modify content
- Extend security beyond managed environments
  - Online and offline use
- Centralized revocation of access

### Why?

- **Reality: content will leave a managed environment**
- **Security is critical**
  - Employee turnover
  - Contractors
  - Expanded use of outsourcing
  - Compliance mandates
  - Change in business relationships

# Enterprise Content Management

A Comprehensive Approach For Public & Private Content

Secure Information Across and Beyond Management Environments



Federated Enterprise Search

Lifecycle Management for Content Stores, Including Legacy Systems

Legacy  
ECM

File  
Servers

Collaboration  
Portal

Email  
Archives

Generic  
Adapter

Active Content

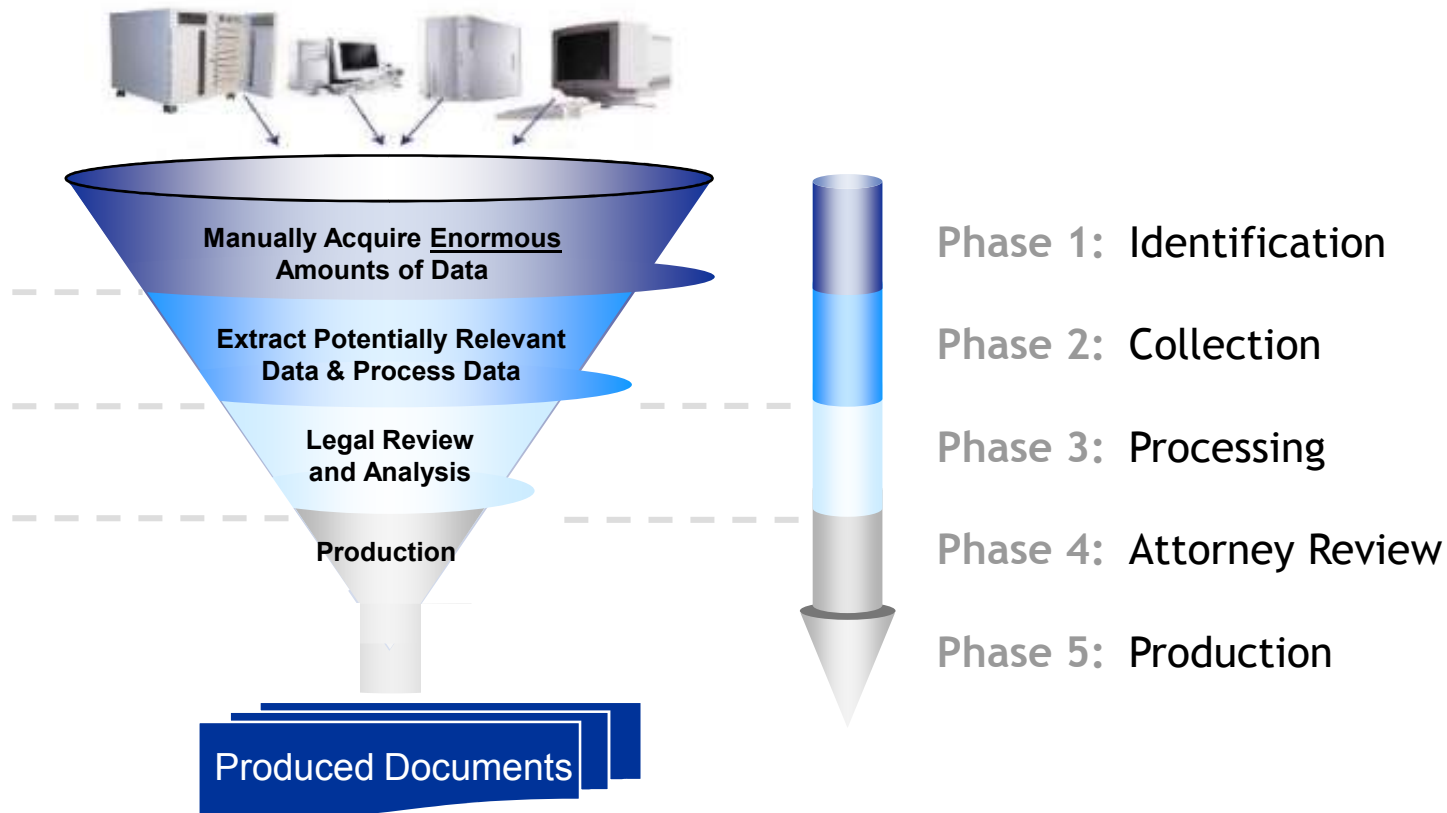
Transactional Content

Historical Content

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# Back to “The Funnel”:

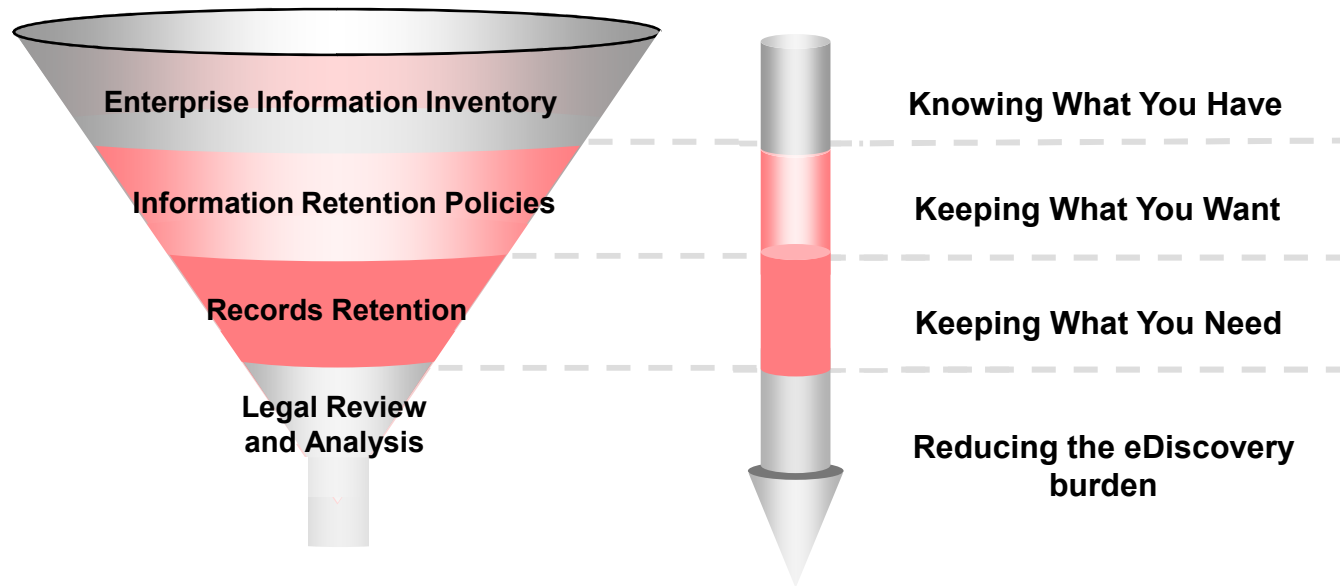
## *Reduce The Pool Quickly & Efficiently*



# End Goal: *Combine Policies with Technology Solutions*



**Broader, Consistent,  
Enforced Policies  
Combined with  
Technology Reduce  
Exposure**



# Transparency



# White House Definition

- **Government should be transparent.** Transparency promotes accountability and provides information for citizens about what their Government is doing. Information maintained by the Federal Government is a national asset. My Administration will take appropriate action, consistent with law and policy, to disclose information rapidly in forms that the public can readily find and use. Executive departments and agencies should harness new technologies to put information about their operations and decisions online and readily available to the public. Executive departments and agencies should also solicit public feedback to identify information of greatest use to the public.
- **Government should be participatory.** Public engagement enhances the Government's effectiveness and improves the quality of its decisions. Knowledge is widely dispersed in society, and public officials benefit from having access to that dispersed knowledge. Executive departments and agencies should offer Americans increased opportunities to participate in policymaking and to provide their Government with the benefits of their collective expertise and information. Executive departments and agencies should also solicit public input on how we can increase and improve opportunities for public participation in Government.
- **Government should be collaborative.** Collaboration actively engages Americans in the work of their Government. Executive departments and agencies should use innovative tools, methods, and systems to cooperate among themselves, across all levels of Government, and with nonprofit organizations, businesses, and individuals in the private sector. Executive departments and agencies should solicit public feedback to assess and improve their level of collaboration and to identify new opportunities for cooperation.

# Vivek Kundra's Change in DC

- <http://www.appsfordemocracy.org/>

Vivek's initiative to allow Citizens to contribute their own ideas/applications to solve City problems

“The first edition of Apps for Democracy yielded **47 web, iPhone and Facebook apps in 30 days - a \$2,300,000 value to the city at a cost of \$50,000** ([all apps created are here](#)). Our mission with "Community Edition" is two fold: to engage the populace of Washington, DC to ask for their input into the problems and ideas they have that can be addressed with technology and then to build the best community platform for submitting 311 service requests to the city. [Submit your ideas and problems here!](#) “

# Transparency Use Case: eFOIA

## Costs Rise as Work Force Declines, Backlog Soars

	Processing Costs	FTEs	Requests Processed	Backlog
1998	\$ 151,409,642	3,998	512,294	12%
1999	\$ 115,288,443	3,819	526,191	14%
2000	\$ 168,633,835	4,117	592,258	13%
2001	\$ 197,896,767	3,425	473,700	18%
2002	\$ 208,298,320	3,819	457,593	15%
2003	\$ 221,055,077	3,708	465,441	15%
2004	\$ 212,915,527	3,454	453,726	21%
2005	\$ 220,662,031	3,197	415,683	33%
2006	\$ 224,687,205	3,657	408,730	41%
2007	\$ 218,094,843	3,438	418,147	34%
2008	\$ 227,828,666	2,653	362,326	34%
<b>Change 1998 - 2008</b>	<b>\$ 76,419,024</b>	<b>-1,345</b>	<b>-149,968</b>	<b>183%</b>

This comparison shows that despite greater funding over the past 10 years, the number of FOIA staffers has decreased and, as a result, the backlog of unprocessed requests has grown.

*Compiled by the Sunshine in Government Initiative*

# Other Examples

- Any form of Budget Reporting (School Districts, DOT, etc....)
- Major Project Spending Reporting (Infrastructure improvements, Social Service Programs, etc....)
- 2 Way Interactive Feedback with Citizens (Blogs, Wiki's, Discussion Forums)



# Questions?



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