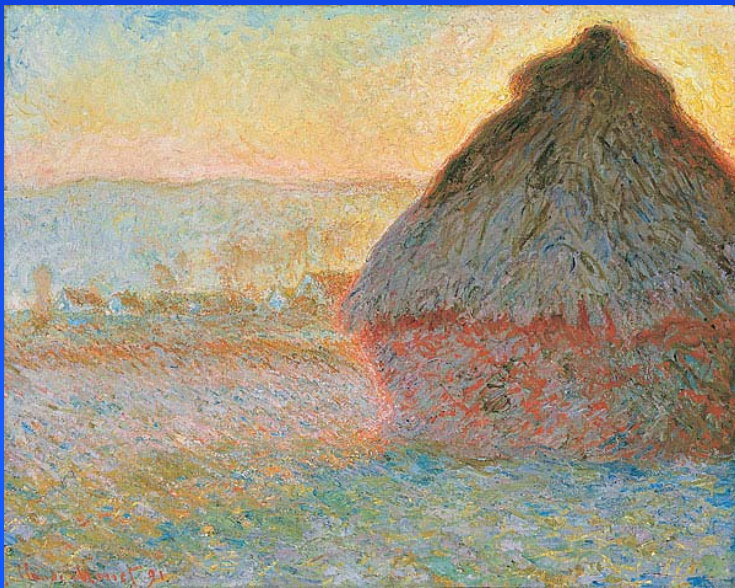


Reduce the Haystack: E-Discovery & Records Management

Caroline J. Walters, MA, MLS
University Records Officer
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RECORDS MANAGEMENT
UNIVERSITY of VIRGINIA

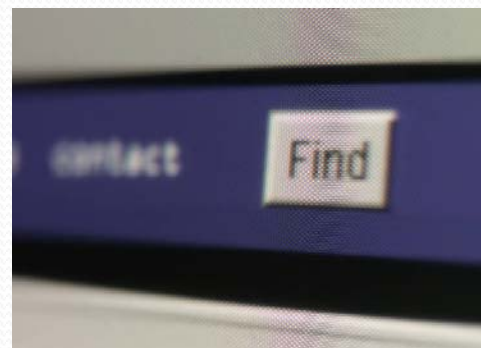
Agenda

- E-Discovery
 - Defined
 - Federal Rules of Civil Procedure
 - Issues
- Records & Information Management
 - Defined
 - State & Federal Laws
- Benefits of Records Management
 - Discovery
 - Other



Discovery

- Pre-trial evidence gathering.
- Happens in all legal cases.
- Sharing information between the parties
- Image of boxes, boxes and more boxes



Pre-2006 Haystack



E-Discovery

- 2006 – Federal Rules of Civil Procedure
 - Allows inclusion of electronically stored information (ESI) in discovery, including:
 - Email
 - Databases
 - Unstructured Data
 - Documents (Word, Excel etc.)
 - Text Messages/Instant Messaging, Voicemail
 - Disaster Recovery Back-ups
 - Forensically retrievable information



E-Discovery Issues

- What??
 - Knowing what is out there
 - Do you have it all?
- Where??
 - Large data volume:
 - Multiple systems
 - Local Storage Devices
 - Servers
 - Vendor Systems
 - Employee Personal storage devices
- How??
 - Time to locate
 - Time to sort
 - Time to review



Post 2006 Haystack



Results

- Settlement
 - Costs of discovery larger than settlement
 - Not enough time to find all information & review
- 2009 Office of Federal Housing Enterprise Oversight
 - Ordered to search all back-up tapes
 - 400 search terms produced 660,000 documents
 - COST - \$6,000,000 = 9% of their total budget



Results

- Only part of the story
 - Uncontrolled deletion/retention
- News & Observer (7/10/2009):
 - A new subpoena issued to N.C. State University . . . shows that investigators want to know more about deleted e-mail messages from former Chancellor James Oblinger's high-priority account.
 - Authorities also asked the university to provide information on the missing Oblinger e-mail messages. Other messages have shown that the governor was involved in helping to create the position for his wife and that Oblinger was a part of it.
 - But the university says e-mail messages from a special account that would have handled that correspondence have been deleted.



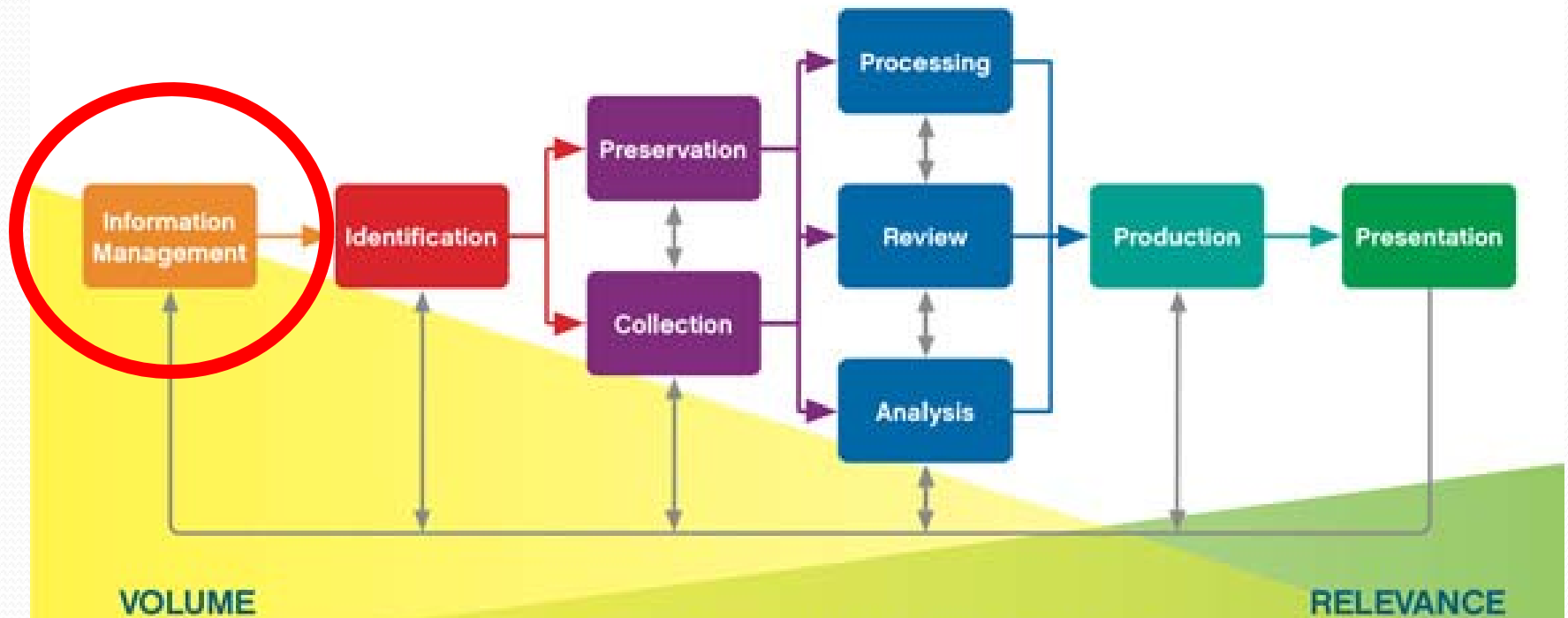
Results

- Did we find it all??
 - What's missing??
 - Other side has something you missed!
- *Qualcomm Inc. v. Broadcom Corp.*
 - Federal judge admonished Qualcomm and its counsel for failing to turn over email evidence.
 - The court ordered Qualcomm to pay \$8.5 million for Broadcom's litigation costs.
 - Referred counsel for possible state bar sanctions.



EDRM

Electronic Discovery Reference Model



Electronic Discovery Reference Model / © 2009 / v2.0 / edrm.net



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RIM - Defined

- ARMA, Records and Information Management (RIM): “The field of management responsible for the efficient and systematic control of the creation, receipt, maintenance, use, and disposition of records, including processes for the capturing and maintaining evidence of and information about business activities and transactions in the form of records.” (*ARMA Glossary, 2007*)



Public Records Laws

- Most states and the federal government have public records laws that:
 - Defines “record”
 - Assigns responsibility to an agency
 - Agency writes records retention and disposition schedules
 - Agency reviews other agencies/office for compliance
 - Some laws have penalties for non-compliance
 - Associated with public access to government records.

Virginia Public Records Law

- Records Management: . . . The application of efficient and economical methods for managing the lifecycle of public records consistent with regulations and guidelines promulgated by the State Library Board . . .” (*Code of Virginia §42.1-85.A*)
- Record: . . . means recorded information that documents a transaction or activity by or with any public officer, agency or employee of an agency. Regardless of physical form or characteristic, the recorded information is a public record if it is produced, collected, received or retained in pursuance of law or in connection with the transaction of public business. The medium upon which such information is recorded has no bearing on the determination of whether the recording is a public record. (*Code of Virginia §42.1-77*)

Records Management Program

- Inventories of all records:
 - Identified location and retention.
- Retain and destroy records on a regular consistent basis (according to a written and approved schedule).
- Assists with legal, audit or investigation holds on records.
- Training of all staff on proper retention requirements and importance.
- Assists IT in selection of software that will protect electronic records authenticity and reliability.

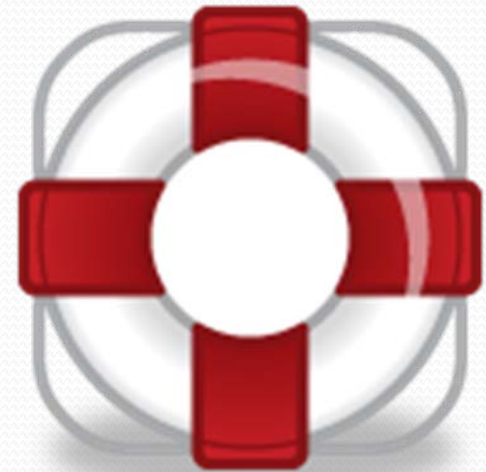
Benefits of Records Management

- E-Discovery
 - Knowledge
 - Location
 - Consistency
 - Reliability
 - Authenticity
 - Documented Removal
- COSTS SAVINGS



Benefits of Records Management

- Overall
 - Reduce Storage Costs
 - Reduce Duplicates
 - Compliance with State and Federal Laws
 - Easier Audits and Investigations
 - Reduce storage of confidential or highly sensitive material in multiple locations



RIM Questions?

- Does your organization have a records management policy? And does your organization follow the policy?
- What laws (state and federal) govern records management?



Be Proactive

- If no RIM policy, get one!
- Deleting is just as important and saving in systems
- Finding it later can be expensive:
 - Microsoft average \$20 million for each discovery request.
 - Microsoft now has a full records management program
- **REDUCE YOUR HAYSTACK**



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UVA Records Management Office

- Process Simplification Study
 - <http://www.virginia.edu/processsimplification/teams/records.html>
- Full-Time Professional Records Officer
- Located in Info Security, Policy & Records Office
- Full Training Program to Faculty and Staff
- Clarifying Retentions
- Communications
 - www.virginia.edu/recordsmanagement

Resources

- E-Discovery:
 - EDRM - <http://edrm.net/>
 - Sedona Conference - <http://www.thesedonaconference.org/>
- Records Management:
 - ARMA International – <http://www.arma.org/>
 - Library of Virginia - <http://www.lva.virginia.gov/agencies/records/>

Questions & Thanks



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