
ARE YOU READY FOR A GOVERNMENT INVESTIGATION?

AVOID GETTING BLINDSIDED:

Start by Getting a Handle on Your Information



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THE USUAL DISCLOSURES

This presentation is for informational and educational purposes only. It is not intended to provide legal analysis or advice on any specific set of facts and should not be relied upon as such. Please consult with an attorney who is authorized to practice law in the applicable jurisdiction regarding any specific questions and issues.

**My Lawyer can
beat up your Lawyer**

BumperSticker.com

GOVERNMENT AGENCIES THAT COULD INVESTIGATE YOUR COMPANY





CIVIL INVESTIGATIVE DEMAND (“CID”)

1. Primary device for gathering documents or information.
2. May also be called a “civil subpoena.”
3. Usually includes a general statement describing the nature of the investigation.
4. Requires production of various categories of documents and information related to the investigation.
5. Sometimes requires testimony from a specific identified person or from a “person with knowledge.”



SIX KEY STEPS FOR RESPONDING TO A CID/SUBPOENA

1. Evaluate the Requests With Your Legal Counsel.
2. Immediately Get Your IT Department Involved.
3. Preserve all Potentially Relevant Information.
4. Contact the Regulator.
5. Decide Whether to Challenge the CID
6. Respond as Quickly and Completely as Possible.



STEP 1: EVALUATE THE REQUESTS WITH YOUR COUNSEL

1. Assess the company's role in the investigation ("target" or "person of interest"?).
2. Evaluate the legal issues and potential violations implicated by the investigation.
3. Identify potential sources of documents/information responsive to the requests.
4. Assess potential problems in responding to the requests as written and determine whether changes can be made to the wording and/or relevant time periods to narrow the requests.
5. Ensure that personnel limit any discussions about the investigation to privileged communications.



STEP 2: IMMEDIATELY GET YOUR IT DEPARTMENT INVOLVED.

1. Identify all potential sources of electronic information responsive to the government's requests, including all potential custodians of records.
2. Disengage any systems that automatically delete, archive or modify emails, voicemail or other documents covered by the request.
3. Evaluate how to efficiently and economically retrieve the data requested in the CID.
4. Estimate the amount of data that will be involved in responding to the requests.
5. Identify electronic discovery vendors capable of ingesting, searching and producing the data in requested formats.



STEP 3: PRESERVE ALL POTENTIALLY RELEVANT INFORMATION

1. Shut down any systems that automatically delete, archive or modify emails, voicemail or other documents covered by the request.
2. Immediately issue a legal hold to all employees, contractors and other parties that may possess documents or information relevant to the investigation.



STEP 4: CONTACT THE REGULATOR

1. Discuss proposed changes to the CID requests to narrow the amount of data to be produced.
2. Discuss any anticipated problems in completing the production on a timely basis, including discussing relevant IT issues and/or limitations, document retention policies that will make data unavailable, etc.
3. Arrange for a “rolling production,” if needed, initially providing information that is readily available, followed by additional responses as soon as they can be produced.



STEP 5. DECIDE WHETHER TO CHALLENGE THE CID

1. Are there legal challenges that need to be raised before the responses are due?
2. Can the challenges can be resolved through negotiation with the regulator?
3. Is there a deadline for “meet-and-confer” sessions after the CID is served (**within 10 days**, for the CFPB)?
4. Is the company willing to waive confidentiality and any privileges discussed in the written challenge?



STEP 6: RESPOND AS QUICKLY AND COMPLETELY AS POSSIBLE

1. Prompt and complete responses to CID requests are an excellent way to demonstrate the company's compliance with applicable laws and regulations.
2. Our experience has been that companies that can quickly provide relevant documents and information in response to a government investigation achieve better outcomes.



REQUESTS FOR ORAL TESTIMONY

1. Not typical, but regulators can compel witness testimony.
2. Similar to a civil deposition - the witness is sworn in, questioned by an examiner, the testimony is recorded and transcribed by a stenographer.
3. The witness may have counsel present, but counsel's rights to object to questions or conduct follow up examination may be limited or nonexistent.



REGULATORS' VIEWS OF LEGAL PRIVILEGES

1. Regulators often assert that responses to CIDs and subpoenas do not waive the attorney-client privilege.
2. Therefore, regulators may demand the production of confidential attorney-client communications and/or attorney work product.
3. It is often unclear that producing such information will maintain the privilege.
4. Counsel must often advise their clients to refuse to produce such communications and work product to avoid a waiver.

got privilege?

POTENTIAL INVESTIGATION OUTCOMES

1. The agency takes no further action.
2. The agency requests for additional documents, information or oral testimony.
3. The agency offers a proposed consent order (settlement).
4. The agency initiates a civil enforcement action.
5. In very rare cases, the agency (or a counterpart) initiates a criminal enforcement action.



PENALTIES FOR FAILING TO COMPLY WITH GOVERNMENT INVESTIGATIONS

1. The regulator can file a state or federal court action to enforce the CID, asking a judge to order the company to produce documents or information or appear and give testimony.
2. If a court order has been previously issued, the regulator can seek a civil sanctions order for a monetary fine and a further order to produce documents or information or appear and give testimony.





IT'S THE LAW

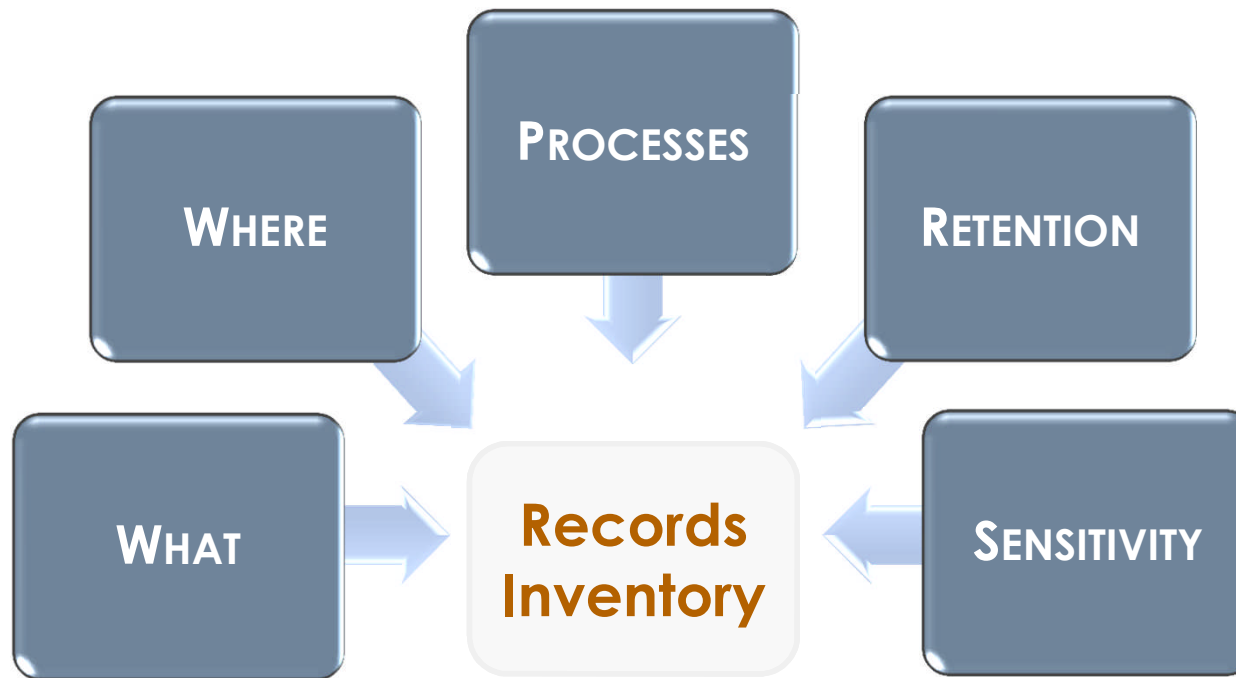


DISCOVERY EXPENSES



STORAGE COSTS

GETTING A HANDLE ON YOUR INFORMATION



HOW DO YOU GET YOUR INVENTORY?

Engage the business



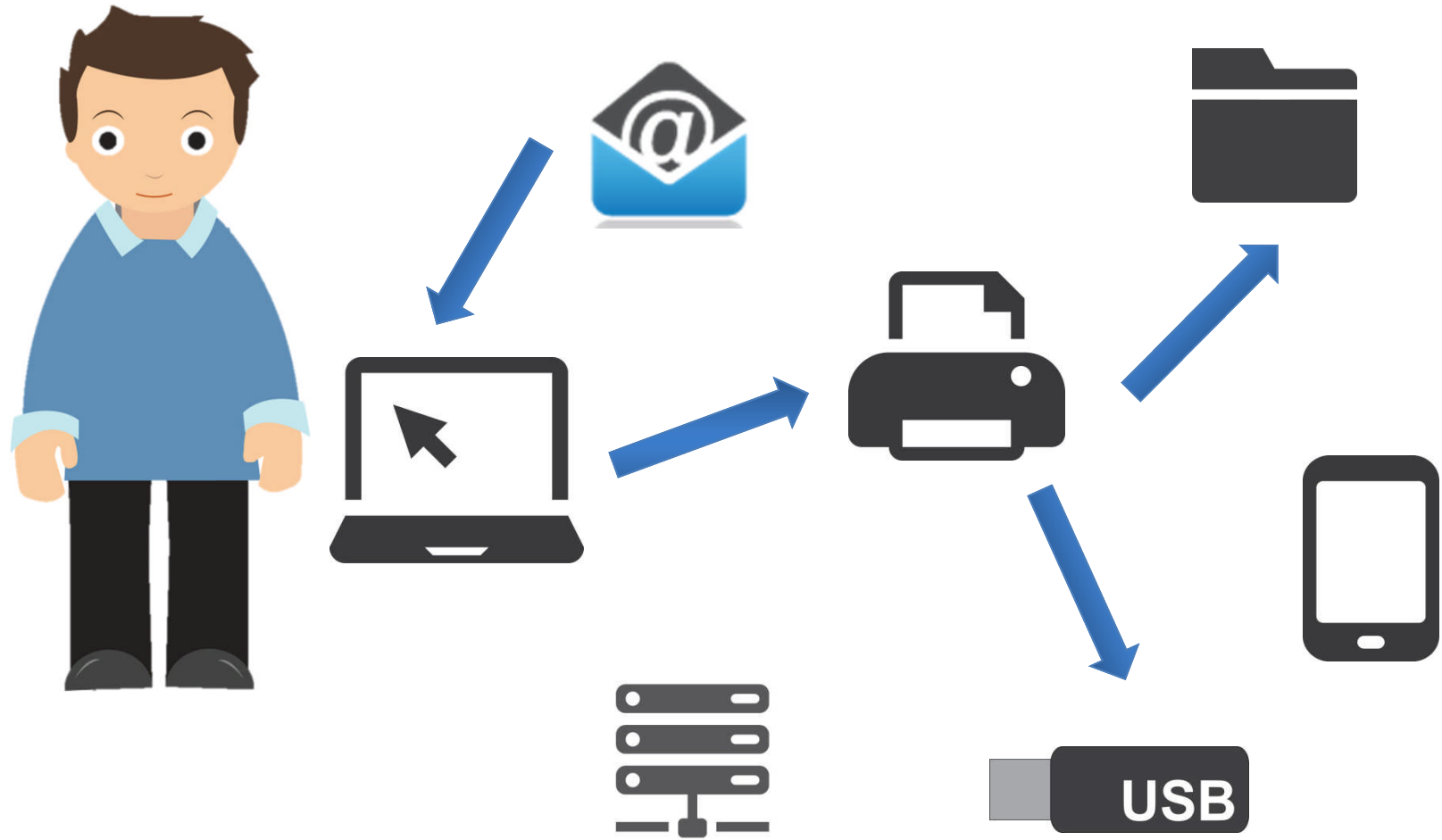
They have the knowledge

RECORDS

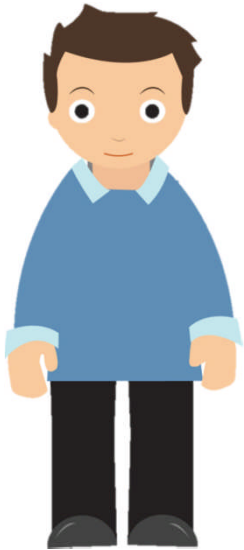
Applications Denied
Charge Offs
Claims Files
Collection Records
Credit Approvals
Credit Counseling Records
Customer Complaints
Dead Deal Files
Delinquent Letters
Foreclosures
HMDA Records
Line Increase Request
Payment Records
RESPA Records
Risk Rating Analysis

DEPARTMENTS & FUNCTIONS

- Audit
- Compliance
- Consumer Lending
- Credit & Operational Risk
- Field Sales
- Mortgage Services
- Mortgage Underwriting
- Lending Operations
- Loan Control
- Loan Originations
- Loan Purchase
- Legal
- Marketing
- Risk Management
- Servicing Management



BUSINESS NEEDS



REGULATIONS

CRA

HMDA

HUD

Regulation B

Regulation Z

RESPA

SENSITIVITY

Bank Account #s

Credit Card #s

Credit History

Debit Card #s

Social Security #s

Tax Information

RESPA Records

Best Practice Retention:
5 Years After Settlement
24 CFR 3500.10

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Real Estate Field Sales (Perm)

Compliance (Perm)
Credit & Op. Risk (0 Years)

Loan Control (Perm)
Loan Purchase (7 Years)
Servicing Mgmt. (10 Years)

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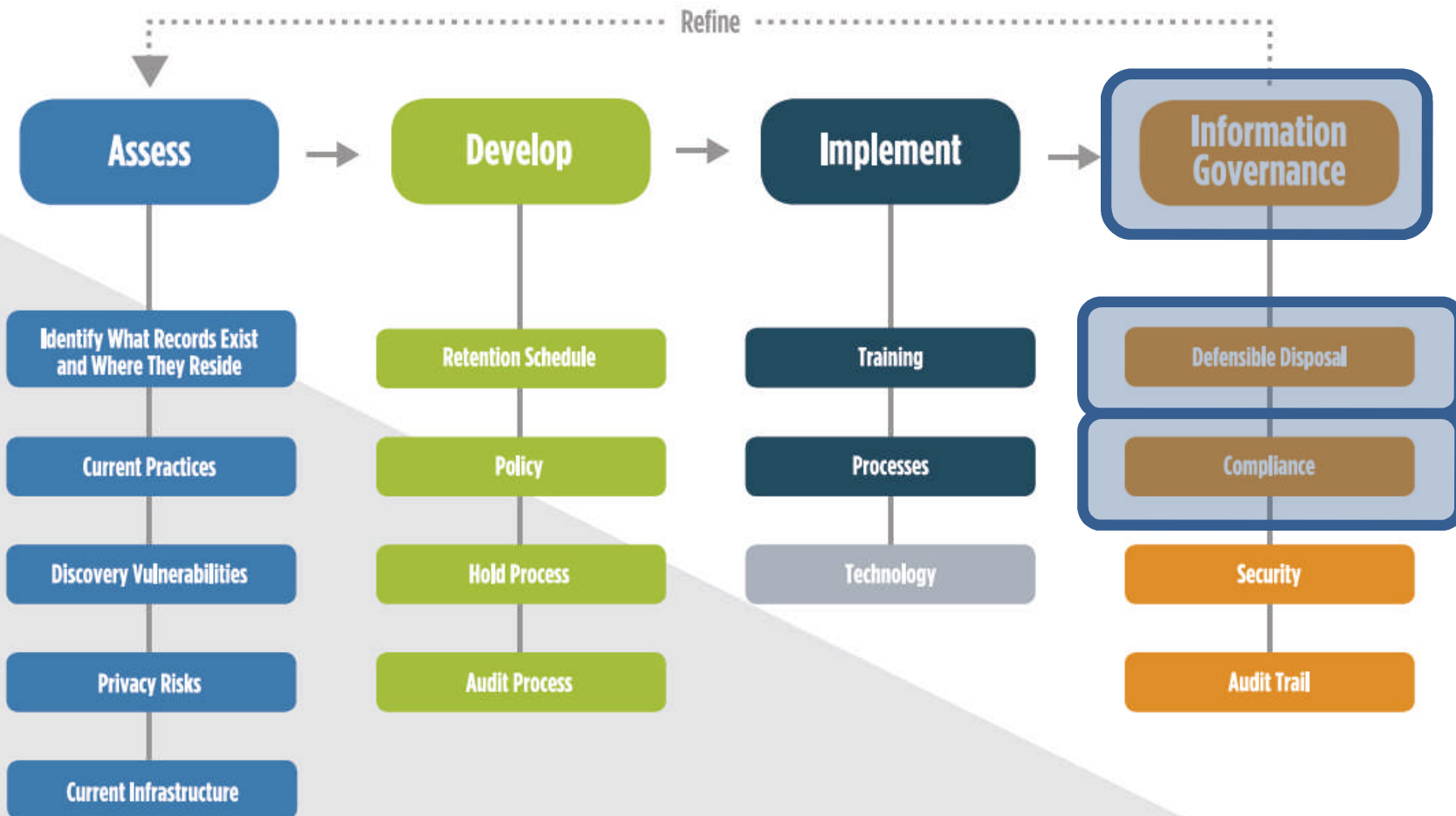
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Documentum | Laptops |
Shared Drives | Tablets Electronic Files

CD/DVD's | Shared Drives |
Laptops | Documentum Email

Iron Mountain |
Personal File Cabinets Paper

Roadmap to Information Governance™



Volume of Information

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COMPLY WITH LAWS



REDUCE RISKS



REDUCE COSTS



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