



# Electronic Discovery

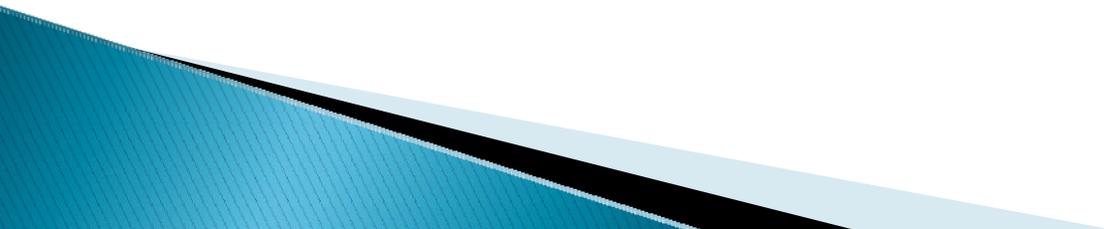
*Heading your way.....*



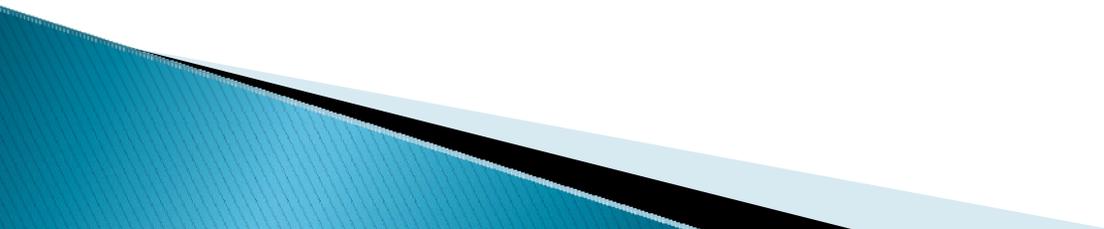
# What is eDiscovery?

- Since September 2006 discovery in civil litigation which deals with information in electronic form
- A required process when faced with litigation or regulatory requests
- Forces parties to find and produce all content relevant to a discovery request, no matter how diverse the content
  - Includes paper documents, electronic documents, email, instant messages, voicemails, videos, and other content types

# Think about today

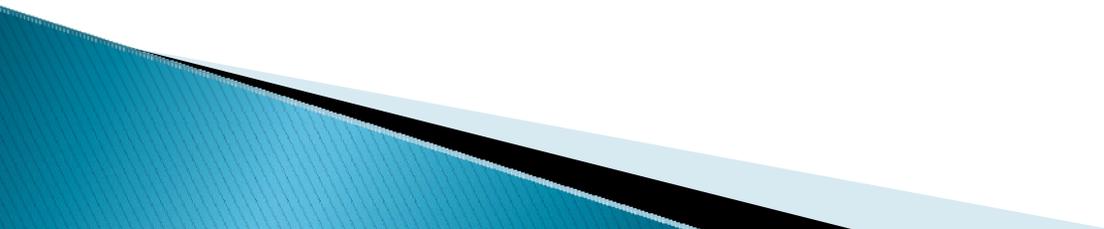
- You pay your bills electronically
  - You do your banking electronically
  - You send and receive email instead of traditional correspondence
  - You use GPS to locate a hotel and restaurants
  - You use PDA's to schedule appointments
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# Think about the next 20 years

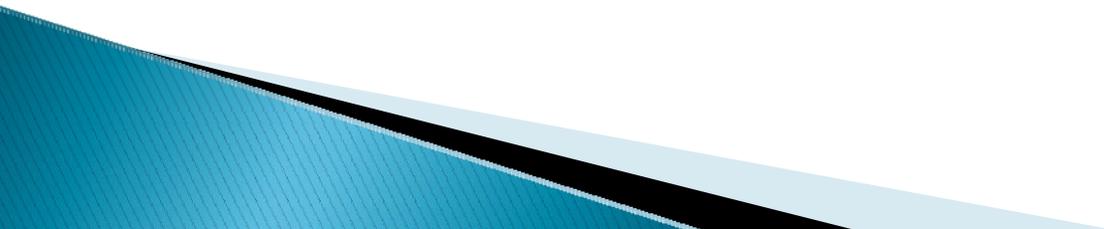
- Your daughter is 12
  - She uses a computer to send email
  - She uses a computer for entertainment
  - She uses a computer for projects
  - Her generation will do most of their activities electronically
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# So what should your City be doing about Electronic Discovery?

Everything it can.....

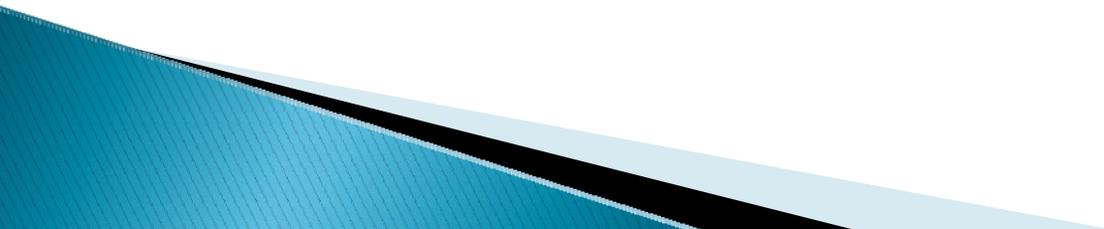
- Acquire Information
  - Reengineer your approach
  - Implement
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# Components of Discovery

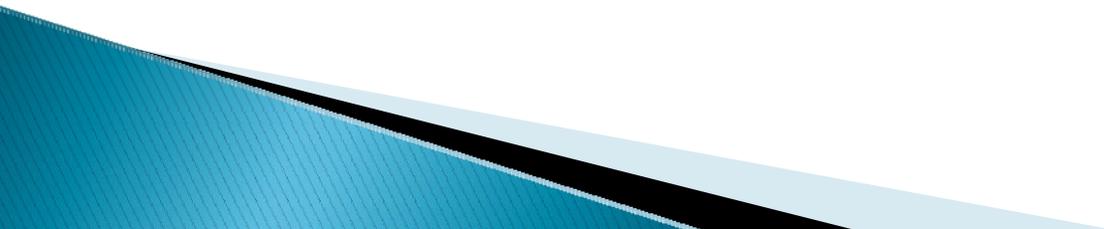
- Computers
    - Laptops, Desktops, Servers
  - Networking Devices
    - Routers, Switches, Firewalls, Hubs
    - WIFI
  - Personal Tools
    - Cell phones, PDA's, Cameras, MP3 players
    - GPS, Printers and Fax machines, digital recorders
  - Odds and Ends
    - Flash memory sticks, other media
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# What can you recover?

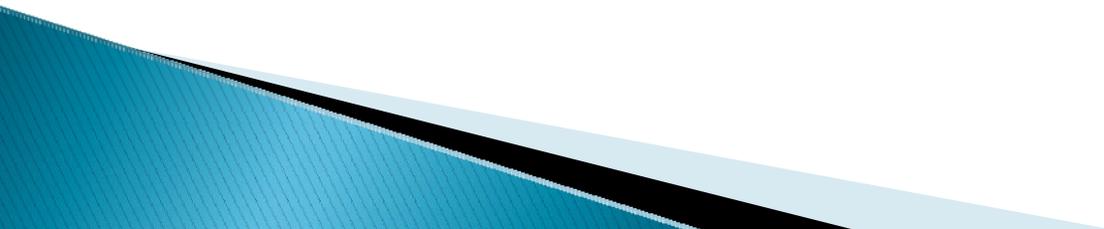
## ➤ Evidence

- Deleted Files
  - Archived Email
  - Deleted Email
  - Erased Disks
  - Cached Web Pages
  - Cached emails from web based mail
  - Photographs
  - Address Books
  - Calendars
  - Etc.
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# Acquisition of Knowledge

- Research, Research, Research!
  - Develop both internal and external contacts
  - Know your experts
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# Reengineer Your Approach

- Professionals become entrenched in methodology
  - Think outside the box
  - Don't forget about technology
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# Implement

- Develop experts you can routinely work with
- Acquire all electronic media in each case

# The eDiscovery process for litigation

## Data collection

- Documents
- Emails
- Instant messages
- Rich media
- Metadata

## Data preparation

- Prove authenticity
- Data reduction
- Inventory & organize
- Ensure readability

## Data review

- Establish relevancy standard
- Data filtering
- Data indexing

## Data production

- Bates numbering
- Presentation format
- Native file presentation



Requires a search, classification, and archiving functionality



Requires a collaboration and document management functionality



Requires a document output functionality

# eDiscovery risk

- Typically a reactive process — “firefight”
  - Rush to find information, review it, and present it to requestor
  - Risk of unknowingly altering, deleting, or losing information — grounds for serious fines and/or sanctions
  - Hidden risk of missing an item
    - Then you really look like you are hiding something.

# Inadequate eDiscovery hits the bottom line

- Limited window of time in which to conduct the process
  - Cost of human capital (i.e., counsel, employee)
- Restoration of backup tapes
  - Requires servers and technical resources

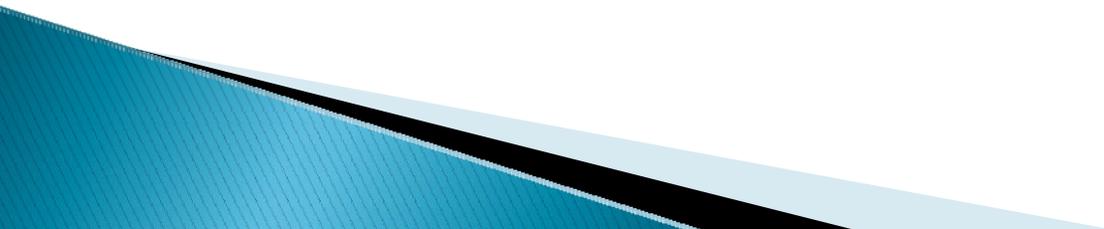
# Records Management vs. eDiscovery

- Why doesn't RM work as an eDiscovery solution?
  - Risk of alteration
  - Risk of omission
    - RM repositories do not function as universal content repositories
  - Lack of consistent file format
  - Need for customized configuration
    - RM software was not built to be a discovery tool

# eDiscovery – Bottom Line

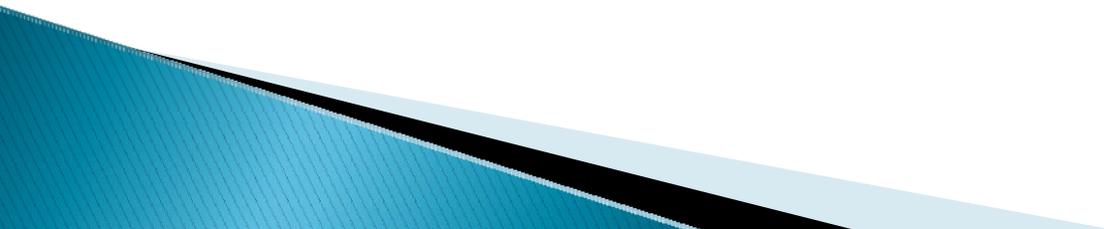
Technology solutions can help, but policies and procedures come first

Technology can only help to enforce policies and procedures



# eDiscovery solutions — in-house vs. outsourced

## ➤ Look to outsourcing when:

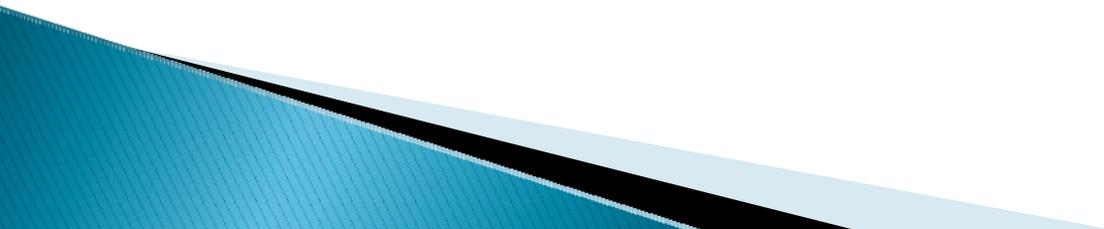
- Pressing litigation needs exist
  - Lack of internal legal expertise
  - Inadequate technology infrastructure exists
  - A requirement exists for a third-party, unbiased chain of evidence custody
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# eDiscovery solutions — in-house vs. outsourced

Conducting eDiscovery internally can make sense when:

- There is repetitive litigation
- Control over documents and information is critical and the company has infrastructure in place
  - Search tools
  - Secure repositories for discovered documents
  - Solid records management policies in place and enforced
  - Document output capabilities
  - Legal resources

# Consider a Case

- A City terminated an employee as a result of a hostile workplace charge.
  - The employee filed a wrongful termination suit against the City.
  - All of the evidence of the hostile workplace charge was electronic.
    - The employee had used a web based email service to send pornographic photos to another employee who filed the complaint.
    - The terminated employee denied the charge.
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# Electronic Discovery

- An Image of the employees disk was obtained.
  - The image was examined and initially the disk had nothing of consequence.
  - Examination of the slack space on the disk revealed the web based email and several of the photos sent.
  - Examination of deleted files and folders revealed massive amounts of pornography as well as the photos sent to the employee.
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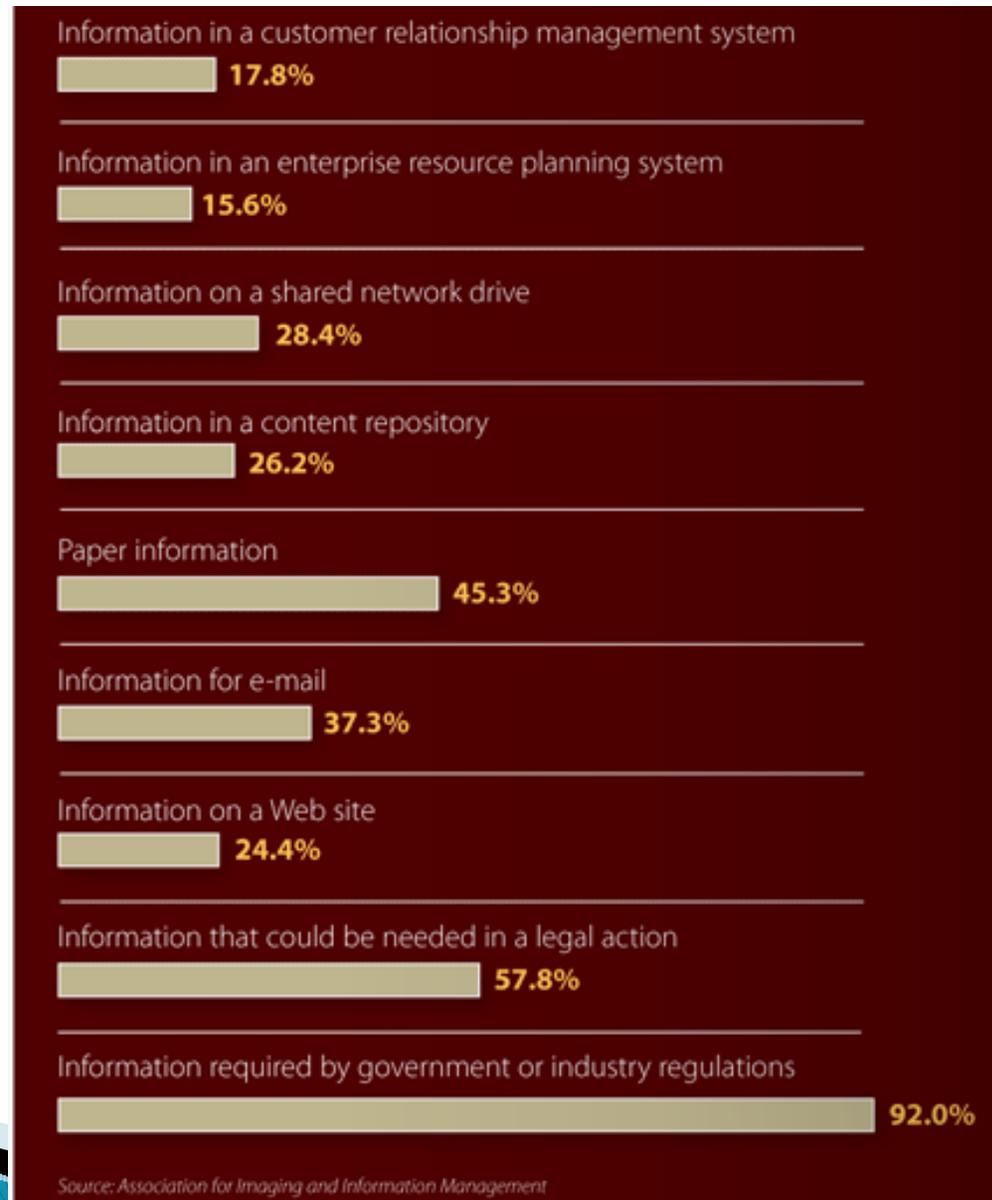
# A Surprising Experience

- ▶ Adopted a comprehensive email retention schedule
  - Archive email
  - Delete after 60 days
  - Backups rotated after 5 weeks
- ▶ E-Discovery Policy
  - “Freeze” deletions upon notification of litigation or investigation

# Future

- Every case will likely have a technology component.
- Many cases will be entirely reliant on electronic evidence
- Electronic discovery is critical to your City. **CRITICAL!**
- Move from reactive discovery to proactive discovery
  - While litigation can't be predicted, agencies that want to avoid high discovery costs will invest in the supporting infrastructure

# What types of information are included in “compliance”?



# How are we doing?

## Implementing Initiatives

How would you characterize your organization's status with respect to *implementing* compliance initiatives?

Have not yet begun



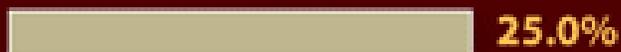
Have completed implementation of compliance initiatives across the entire organization



Have begun to implement one or more compliance initiatives, but much remains to be done

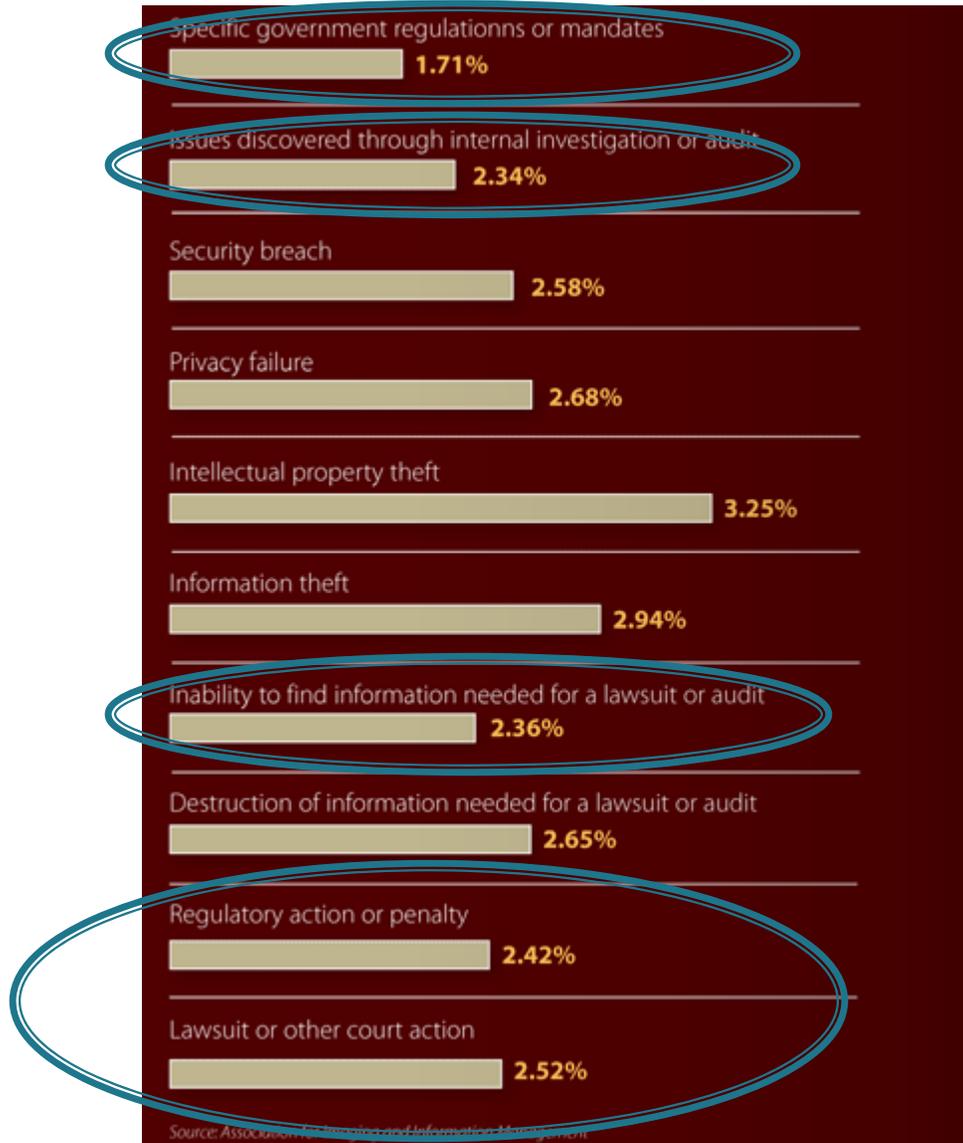


Have already completed one or more compliance initiatives



Source: Association for Imaging and Information Management

# What drives investment in compliance (scale 1 = most important)



# Questions?

Randy Jackson

[Randy.jackson@surpriseaz.com](mailto:Randy.jackson@surpriseaz.com)