Big Data As a Threat?
An Alternative Approach to Cybersecurity

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Data Breaches and Cyber Attacks

- Exposure of corporate secrets, trade secrets, and other proprietary information
- Exposure of personally identifiable information (employees and customers), including health information
- Disruption/destruction of operations

- Attacks are cheap: ($2 for crashing a website; $30 for malware verification; $5,000 for “zero day”)
- Malware now tends to be “one time use”

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Who is Conducting Cyber Attacks?

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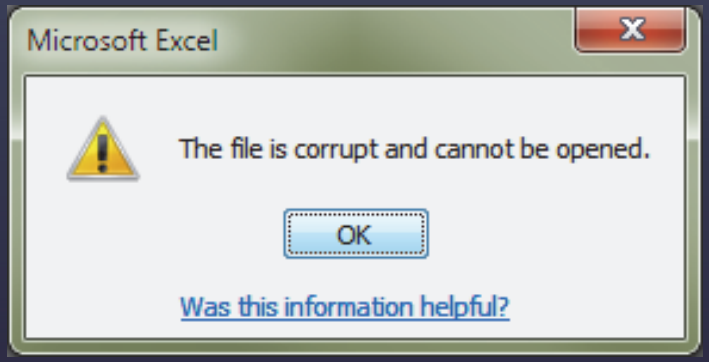
Data-Borne Problems

- End-of-Life Issues
- “Insider Threat”
- Corrupted Data



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Too Much Data?

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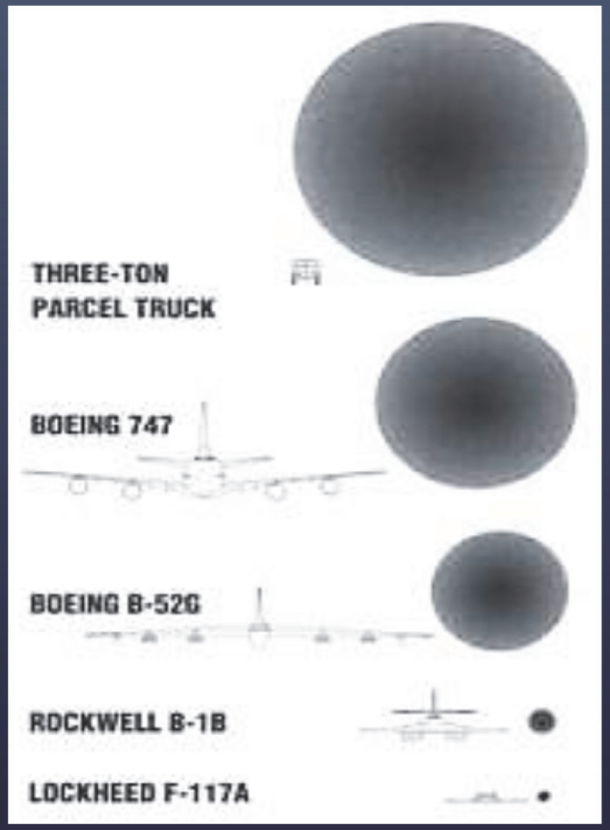
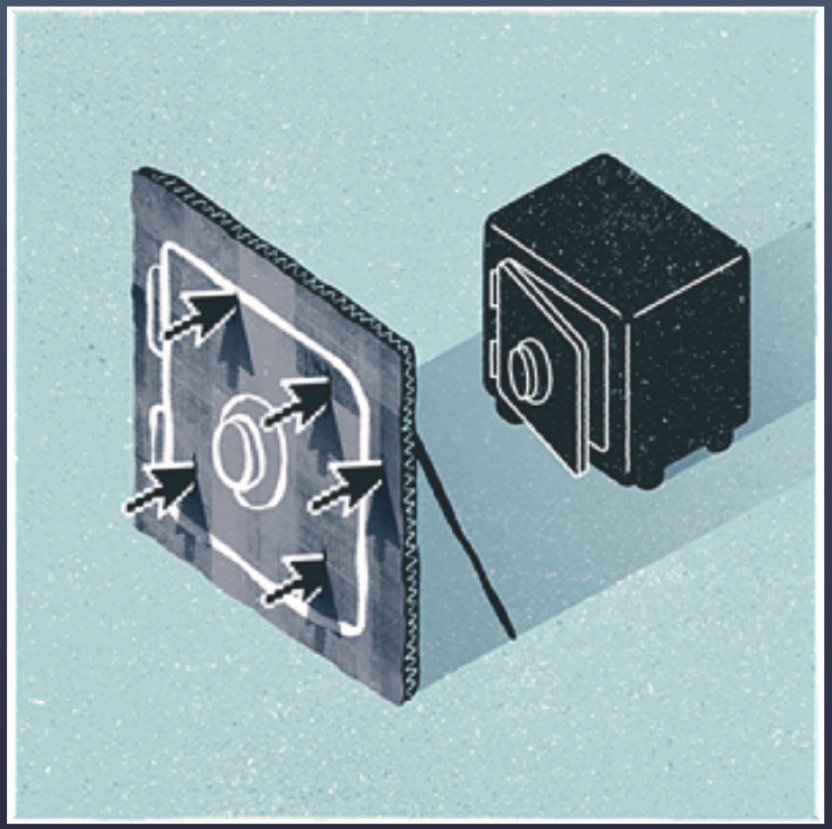
Reduce Your Value





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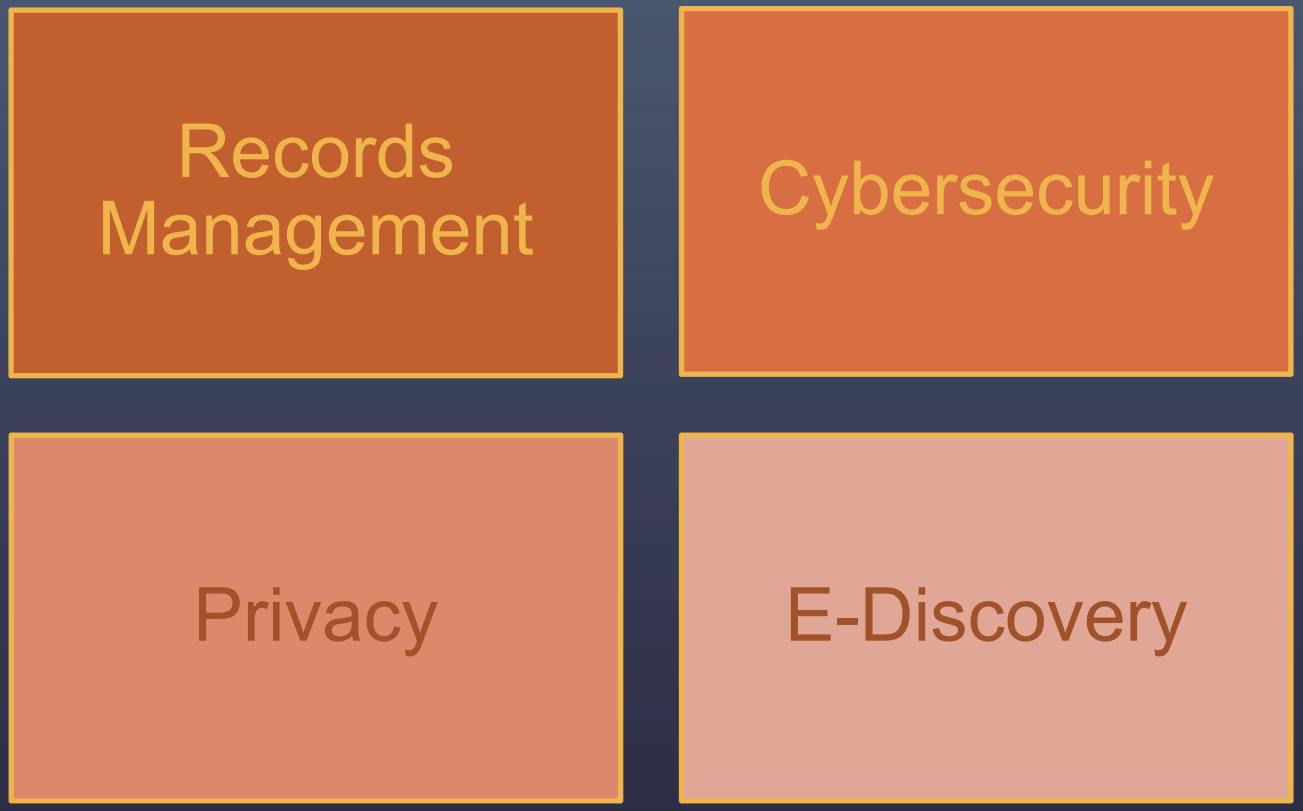
Disparate Information Risk Management



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Information Risk Management

- Companies are starting to understand how fundamentally these information risks are related
- Projects in the various areas often overlap or produce conflicting work products
- Training efforts developed separately create feeling of training overload
- Companies want:
  - Holistic view of information and data
  - Understanding of what you have and where you have it
  - Ownership over information in the business
  - Disposal of unnecessary data
  - Better identification of high-value information assets
  - Improved protection, security and access

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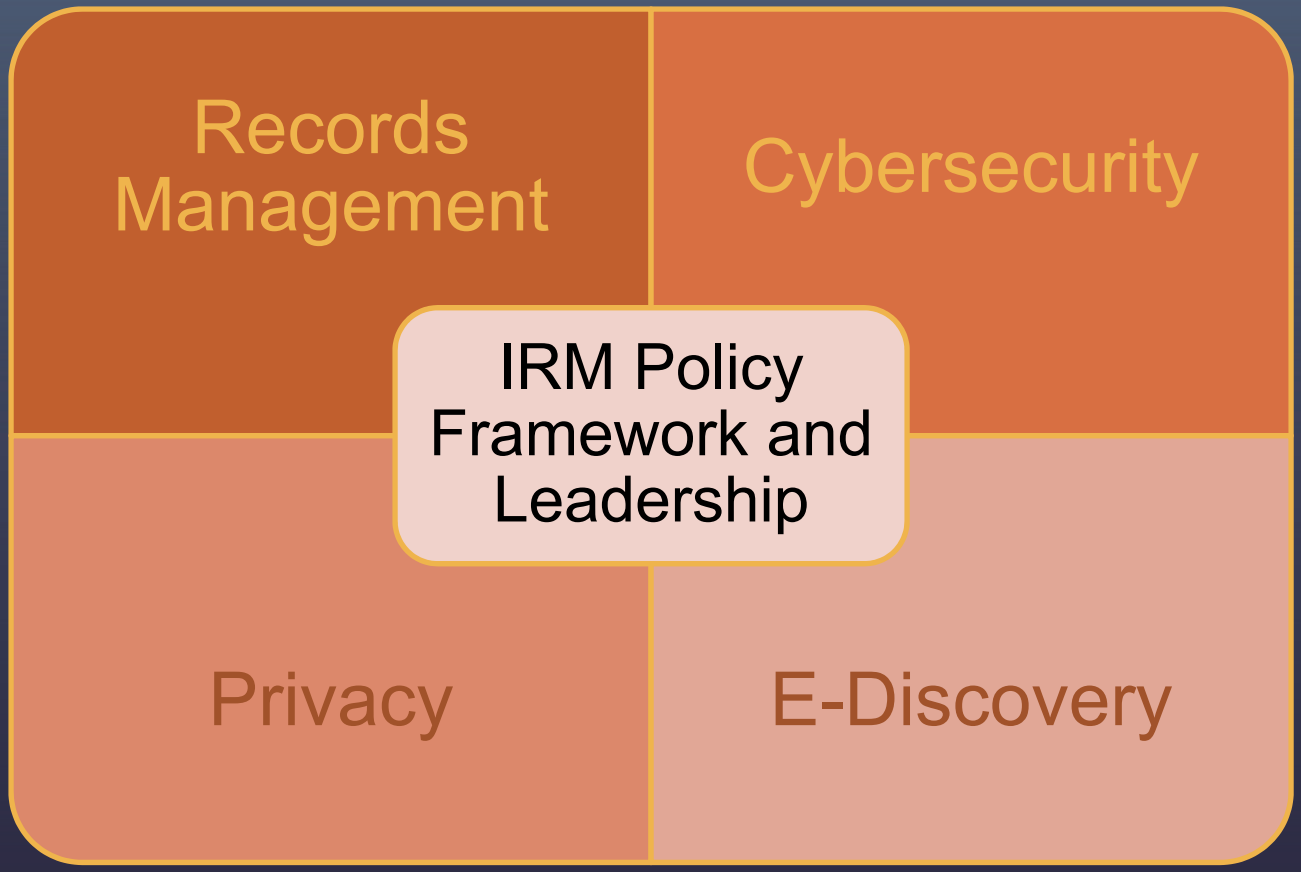
Integrated Information Risk Management



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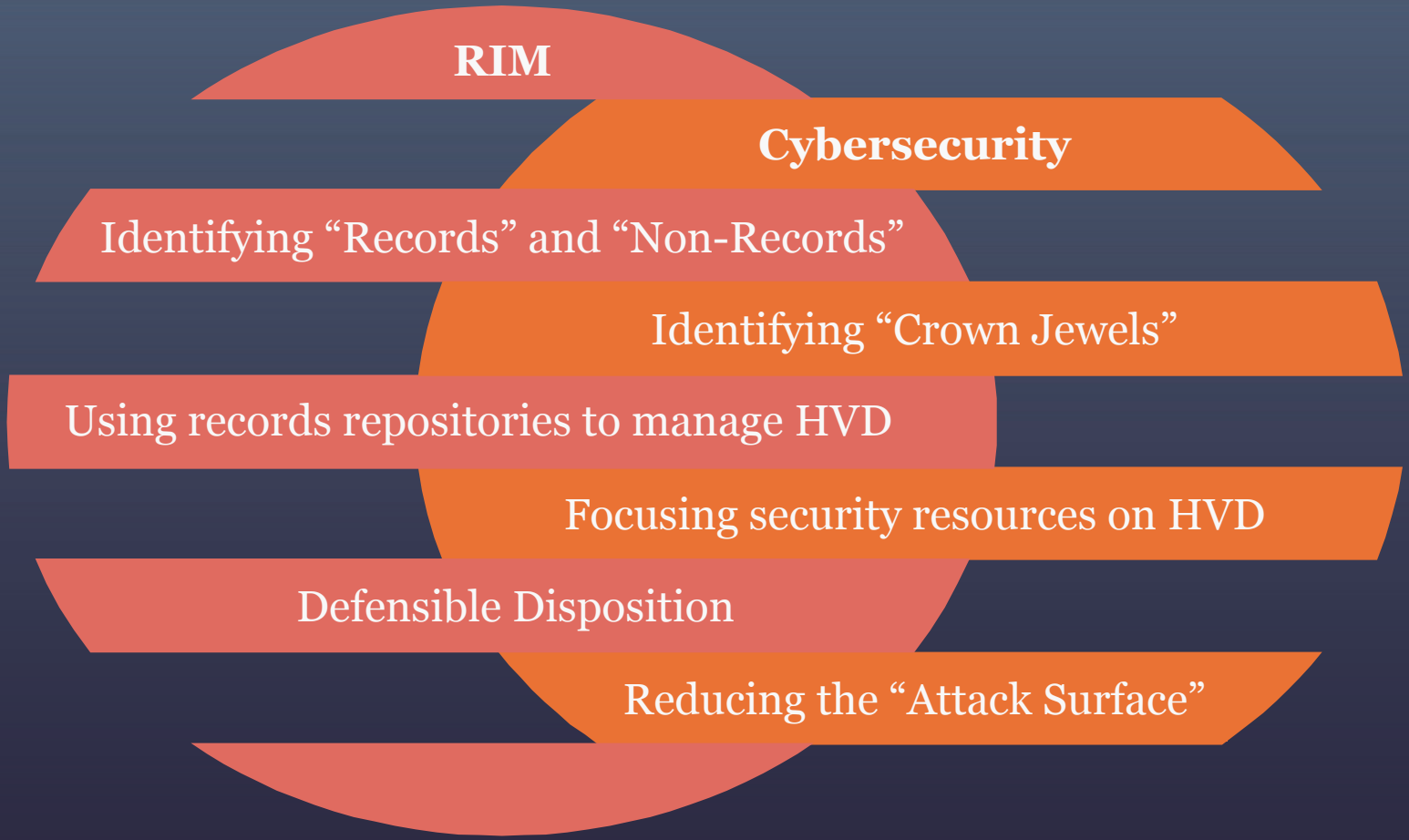
Records & Information Management "RIM" and Cybersecurity Complement Each Other in the Management of High Value Data ("HVD")



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Key Elements of an Integrated Program

Data inventory and Business Process Taxonomy

Identify the types & categories of data stored

- Surfaces what you have and where you have it
- Provides context for ownership and enrichment of data
- Information about how data should be stored, protected and managed can be derived through *inference* rather than direct analysis

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Key Elements of an Integrated Program

Facilitate routine, policy-driven disposition

Develop a risk-based, phased approach to the disposition and remediation of legacy data

- Less data means less legal risk & less info to protect, produce & recover
- Centralization can manage redundancy, offering greater insights into data & increased access to data
- Routine disposition creates a culture in the organization of separating high-value data from low-value data

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Many Theories of Liability

- Shareholder claims/ SEC Disclosures
- Loss of IP/trade secret claims
- Negligent selection, design or contracting
- Failure to take “reasonable” security measures for threats that a company knew or “should have known” about
- Strict liability
- FTC/State UDAP claims, international regulator liability

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What Would Litigation Look Like?

- From ***FTC v. Wyndham***
- Failure to:
  - remedy “known security vulnerabilities” such as allowing insecure server/network connections
  - employ commonly used methods to require user IDs and passwords that are difficult for hackers to guess
  - adequately inventory computers in order to manage network devices
  - employ reasonable measures to detect and prevent unauthorized access or to conduct security investigations
  - follow proper incident response procedures, including failing to monitor computer network for malware used in a previous intrusion
  - adequately restrict 3d party vendor access
  - share threat information/act upon shared information
- How can you make sure you are taking “reasonable” cyber security measures?

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The SAFETY Act

"**S**upport **A**nti-Terrorism by **F**ostering **E**ffective **T**echnologies Act"

- Part of the Homeland Security Act of 2002
- **Eliminates** or minimizes tort liability for sellers of DHS-approved "technologies" should suits arise after an attack (physical or cyber), including:
  - SAFETY Act protections obtained only by submitting an application to DHS
  - ***Applies to services, products, policies***
    - *This includes* ***self-deployed programs***
  - Protections apply even if approved technologies are sold to **commercial** customers or if the attack originates from **abroad** so long as US interests implicated (i.e., economic losses)

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Act of Terrorism = Cyber Attack

- Any cyber security product, service, and/or policy is eligible for SAFETY Act protections
- Cyber attacks are encompassed under this definition
- There is NO requirement that the attacker's identity or motivation be identified/proven:
  - Only mention of "intent" potentially relates to intent to cause injury or loss, NOT traditional "terrorist" intent
- This means that ANY cyber attack could potentially trigger SAFETY Act liability protections

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Designation vs. Certification

- Two levels of protection under the SAFETY Act
- Under “Designation”:
  - Claims may only be filed in Federal court
  - Damages are capped at a level set by DHS
  - Bar on punitive damages and prejudgment interest
- Under “Certification” sellers also receive a presumption of immediate dismissal
- In both circumstances claims against **CUSTOMERS are to be immediately dismissed**

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Key Questions and How To Use

- Any costs for filing a SAFETY Act application? **N**O
- What kind of cybersecurity products are eligible for SAFETY Act protections?
  - All *PRODUCTS, SERVICES, AND/OR POLICIES, INCLUDING INTERNAL POLICIES*.
- What is the practical effect of obtaining SAFETY Act protections?
  - ***A cap on damages or immunity*** from damages arising out of or related to cyber attacks.
- Can I realize SAFETY Act benefits just by purchasing and using SAFETY Act approved cyber security solutions? **YES**
- Can I require SAFETY Act approval in procurements? **YES**
- What kind of claims will this help mitigate/eliminate?
  - **Negligence, third party liability, failure to take reasonable mitigation steps, D&O claims**

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Thank You for Participating!

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