

## What is Legacy Data?

- **Legacy Data, Legacy System:** Legacy Data is ESI in which an organization may have invested significant resources, but [which] has been created or stored by the use of software and/or hardware that has become obsolete or replaced (“legacy systems”). Legacy data may be costly to restore or reconstruct when required for investigation or litigation analysis or discovery.

The Sedona Conference Glossary (Second Edition)

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## What is Legacy Data

- **A more realistic definition:** legacy data includes all information that is “inactive” – data that is stored in physical or electronic format and is not currently understood, used or managed. This includes tremendous volumes of data accumulated in files and data stores originally saved for specific reasons – disaster recovery, business needs, retention and preservation processes – that has since outlived its value.

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## Why is Legacy Data a Problem?

- The corporate landscape is littered with mountain ranges of legacy data that corporations have no business reason to keep.
- According to IDC, data volumes are increasing at a rate of 40% per year in the typical corporation.
- Not having a handle on the scope and nature of legacy data can create significant risk in future litigation.

## Can Companies Dispose of Legacy Data?

- “[D]ocument retention policies’ which are created in part to keep certain information from getting into the hands of others ... are common in business. It is, of course, not wrongful for a manager to instruct his employees to comply with a valid document retention policy under ordinary circumstances”.

## Can Companies Destroy Legacy Data?

- So, it is OK to destroy as long as no preservation obligation; and
- Retention policy passes Lewy v. Remington Arms test:
  - Was the retention policy “reasonable”?
  - Were documents subject to destruction under the policy relevant to past litigation\investigations and if so with what frequency?
  - Was the retention policy adopted in “bad faith”?

836 F.2d 1104 (8<sup>th</sup> Cir. 1988)

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## Disposition Framework

### Disposition of Legacy Data



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## Disposition Framework

### Defensible Process:

- Reasonable
- Documented
- Auditable
- As close to objective as possible

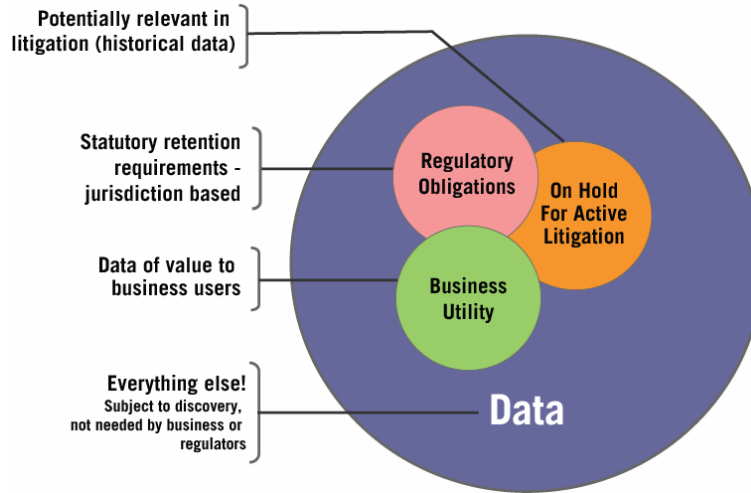
**It must also be efficient**

## Disposition Framework

### 5 Step Process:

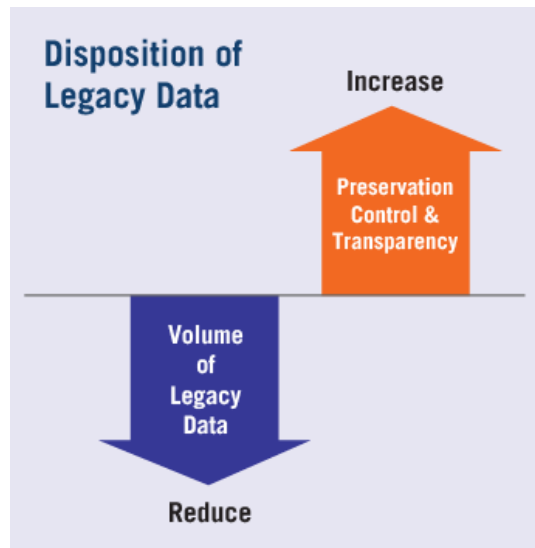
- Catalog and understand retention needs and preservation obligations
- Build matrix of information that must be retained or preserved – the “Obligations Matrix”
- Inventory\categorize Legacy Data
- Filter Legacy Data through Obligations Matrix
- Dispose of data that is not subject to retention or preservation

## Disposition Framework



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## Conclusion



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