Document management and discovery:
Tips, traps and best practices
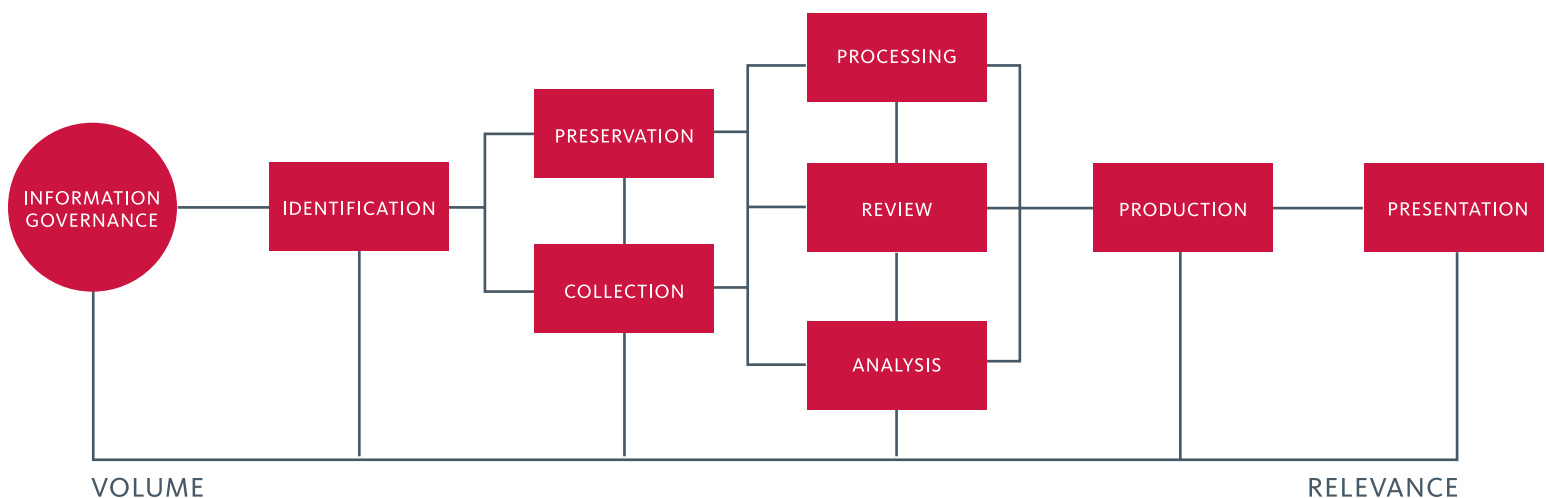
Pre-litigation protocols to keep in mind:

Simple pre-litigation protocols greatly minimize cost and business disruption once litigation starts. Good information governance practices in preparation for litigation include:

- Data mapping

- Data retention policies and processes

- Litigation hold processes

- Set team discovery "responders"

- Internet, email and device usage policies

Litigation holds – What you need to know

- Distribute litigation hold notices to relevant persons as soon as litigation is contemplated or threatened

- Ensure that any automatic file destruction mechanisms are suspended by the issuance of litigation holds

- Draft hold notices in plain English and set out clear instructions on what must be preserved

- Talk to your people to identify who should receive hold notices

- Refresh and redistribute notices at least every six months

Electronic Discovery Reference Model

INFORMATION GOVERNANCE — IDENTIFICATION — PRESERVATION — COLLECTION — PROCESSING — REVIEW — ANALYSIS — PRODUCTION — PRESENTATION

VOLUME   RELEVANCE

Adapted from EDRM.net

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Do's & Don'ts of document review & production

Do's

- Understand where, how and for how long your company houses its data

- Consider implementing data retention and usage procedures and policies if appropriate

- Have a plan for the creation and dissemination of a legal hold and ensuring compliance

- Build up your in-house capacity to save on costs

- Ask for deals from your technology vendors — especially on data hosting

- Ask your counsel whether they are planning on using analytics in the document review and how

- Ask counsel to demonstrate how analytics software can save costs

- Explore cheaper ways to perform document review

- Try to get regulatory authorities to agree to a more reasonable approach to production

- Consider a native production but be aware of the risks

- Have your counsel negotiate a clawback agreement

Don'ts

- Assume you'll save money in the longer term with a Master Service Arrangement with a cheap e-discovery vendor

- Fail to engage with the other side respecting discovery and production specifications, even if the law does not require it

- Make your data retention and usage procedures user dependent

- Lock yourself into old or outdated technology

- Be afraid to use TAR

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