Challenges

- Outdated Records Management Policy (PM 99-05)
- Ambiguity within new regulations
- Complexity of electronic records and compliance
- Risk
Why a Document Retention Program Matters

- Ensures compliance with federal and state laws and regulations
- Protects Business in Litigation
- While clearing out clutter is important, tossing the wrong paper or deleting an important e-mail can have disastrous consequences
- Reduces chances for inconsistent, reckless or personally-motivated disposal of records
Why a Document Retention Program Matters (cont)

- Valuable records become more accessible
- Valueless records are destroyed
- Inactive records are transferred
- Frees up valuable space
- Cost Savings and Productivity
- Promotes and improves operational efficiency
Why Now?

- Bulk of business information is produced electronically
- Compliance with regulations is becoming a top priority for executives across all industries due to the recent crackdowns and introduction of the newer regulations, such as Sarbanes-Oxley.
- Executive leadership change in the past three to four years
Why Electronic Records Compliance is a Difficult Issue

- Volume
- Distribution/Locations
- Interpretation – Data + Software
- Unmanaged information – email
- Back-ups/Legacy Systems
Privacy Laws

- **California Public Records Act**
  (Government Code Sec. 6250 et seq.)
  - Writing
  - Contains Information
  - Owned, used or retained by state/local agency
  - Exemptions

- **California Information Practices Act**
  (California Civil Code Sec. 1798 et seq.)
  - Agency Obligations

- **Family Educational Rights and Privacy Act**
  (20 USC sec 1232 (g))
  - Education Records
What Dictates Compliance?

- Statutes / Regulations
- Court Decisions
- Discovery
- University Needs/Risk Assessment/Cost
Statutes/Regulations

- Sarbanes - Oxley Act of 2002
- Health Insurance Portability & Accountability Act (HIPAA)
- Gramm-Leach Bliley Act (GLBA)
Court Decisions

- Authur Anderson
- Morgan Stanley
- Zubulake Decision(s)
What is Discovery?

- A formal investigation – governed by court rules – that is conducted before trial. Discovery allows one party to question other parties, and sometimes witnesses. It also allows one party to force the others to produce requested documents or other physical evidence.

- The same rules that govern paper discovery govern electronic discovery.
Electronic Discovery

- Electronic discovery refers to discovery of electronic documents and data
  - Email, web pages, word processing files, computer databases, and virtually anything that is stored on a computer

- Documents and data are “electronic” if they exist in a medium that can only be read through the use of computers
  - Cache memory, magnetic disks, optical disks (such as DVDs or CDs), and magnetic tapes
Challenges of Discovery

- Time and cost of compliance
- Difficulty of compliance
- Multiple sources, locations and formats
- Risk of non-compliance
University Needs/Risk Assessment/Cost

- University needs records to perform functions
- Form and format of records are dictated by organizational needs, not litigation
- Unless litigation is also considered, the burden and cost of discovery can be huge, even disastrous!
- Cost drives system development
Impact of Sarbanes-Oxley and Other Laws

Includes criminalization of the destruction, alteration and falsification of records in federal investigations, bankruptcy cases and official proceedings.

Section 802 provides for a fine and imprisonment up to 20 years for knowingly “alter, destroy, mutilate, conceal, cover up, falsify, or make a false entry” to any record or document with intent to impede, obstruct or influence an investigation...”
Action Plan

- Establish Advisory Committee
  - Records Management Coordinator
  - President’s Office Representative
  - University Legal Counsel
  - University Archivist
  - Risk Manager
  - Compliance Auditor
  - IT Representative
  - Chief Information Officer (CIO) or designee
Action Plan (cont)

- Update Records Management Policy (PM 99-05)
- Complete and launch website
- Update Retention Schedule
- Communicate Records Management Info.
- Conduct periodic review of records management program and procedures and report to senior leadership
- Begin Discussion on Technology Solution
Use of Technology/Solution

- Microsoft Exchange Server 2007-Sharepoint
- Facilitates compliance requirement for e-mail and messaging, including data retention and discovery, controlled access to data, and policy and procedure enforcement
An RIM Program provides systematic review, retention and destruction of documents in the course of business.

Identifies documents that need to be maintained with guidelines for how long they should be kept and how they should be destroyed.

A document retention policy formalizes protocol for saving and discarding documents in the course of business.

Having a policy may aid in litigation when documents are properly destroyed due to a planned schedule.

Failure of a competent policy can undermine a position in litigation.

Failure to protect information in discovery can have dire consequences.