



**Walking in a  
Wiki  
Wonderland**

**What Businesses  
Can Learn About Protecting  
Trade Secrets and Confidential  
Information from the WikiLeaks Debacle**

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# Overview

1. WikiLeaks and Private Leaks
2. Trade Secret Law
3. The Valspar Case
4. Practical Guidance and Policies
5. Litigation Tips



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**The Washington Post**

**The New York Times**

**StarTribune**

**San Francisco Chronicle**

**CHICAGO SUN-TIMES**

# The WikiLeaks Debacle

Top Secret government documents

- Diplomatic cables
- War logs
- Military video



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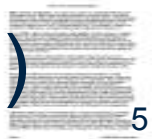


# The WikiLeaks Debacle



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“Protect IBM's clients, business partners and suppliers. Clients, partners or suppliers should not be cited or obviously referenced without their approval. Externally, never identify a client, partner or supplier by name without permission....If a client hasn't given explicit permission for their name to be used, think carefully about the content you're going to publish....” (IBM Social Computing Guidelines)



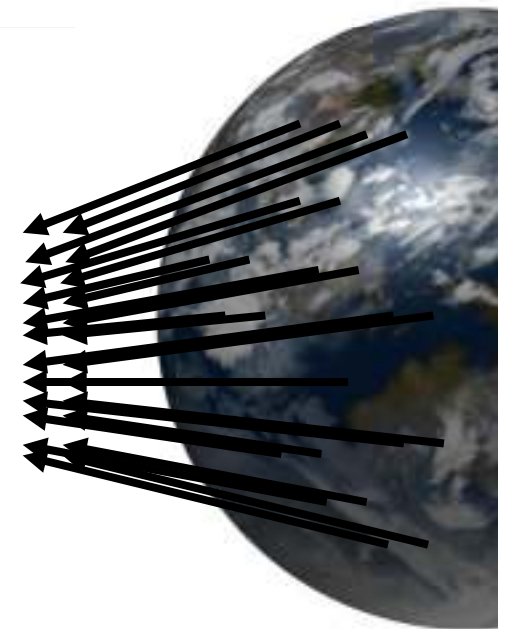
# Private Leaks

Apple prototype 4G iPhone

- Left in bar
- Gizmodo
- 13 million views



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# Private Leaks



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“What to avoid. Sharing 3M confidential information with friends or family....Leaving 3M confidential information unattended on your desk, within 3M facilities, in public areas, etc....Divulging information about a new product or service before any necessary patent applications have been filed.” (Information Security, Trade Secrets and Confidential Information” Policy)

Information Security, Trade Secrets and Confidential Information Policy

# Private Leaks

*Bank Julius Baer vs. WikiLeaks*  
(N.D. Cal. 2008)

- Disgruntled former employee
- Posted hundreds of employer's documents  
WikiLeaks



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# Private Leaks



“Protection and Proper Use of Corporate Assets....Company assets must not be used for personal benefit or for any purpose which may compete with the business of the Company. Such assets include [electronic resources]. Travelers allows its employees to make occasional inconsequential non-business use of its resources, provided that such use complies with legal and ethical requirements and with all applicable company policies.” (Travelers Code of Business Conduct and Ethics)



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## “Pre-test” for In-house Counsel

One of your clients calls you late Friday afternoon and tells you that her **senior technical employee** has just resigned. The resigning employee has tendered his two-week notice, but **refuses to say** where he is going to work. The boss suspects he is going to go work for a **Chinese competitor**.

What should you do?



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# Answers



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- A) There is really nothing you can do about this situation. IP protection in China is difficult to obtain and this employee didn't sign a "non-compete" agreement. The boss should call HR and have them look for a replacement.
- B) The employee should be terminated immediately. All computer access by this employee should be severed and the employee's laptop and phone collected and quarantined. An immediate investigation should be undertaken to assess whether any sensitive data has been downloaded by the employee. If evidence is uncovered of such downloading, then the FBI should be notified immediately.
- C) Something in between A and B.
- D) None of the above.



## Answers (continued)



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“3M reserves the right to monitor or access employee communications or other materials created, received, stored, transmitted or processed using 3M’s electronic resources, at any time and without notice....For this reason, users of 3M’s electronic resources should not have an expectation of privacy in e-mails, documents, files, voice files or other communications....” (Electronic Resources Policy)



**U.S. Department of Justice  
Federal Bureau of Investigation**



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## **NORTHWEST SUBURBAN MAN CHARGED WITH THEFT OF TRADE SECRETS**

The Chicago office of the Federal Bureau of Investigation (FBI) announced today the arrest of a northwest suburban man for the theft of trade secrets from his former employer, the Valspar Corporation.

**DAVID YEN LEE**, age 52, of 400 West Rand Road in Arlington Heights, Illinois, was arrested yesterday morning at his residence, without incident, by FBI Special Agents. LEE was charged in a criminal complaint filed in U.S. District Court in Chicago with one count of Theft of a Trade Secret, which is a felony offense.

# We got lucky!

- Lee was sent home the day he resigned and his computer was quarantined.
- We analyzed his computer and uncovered some irregularities.
  - Internet history was deleted.
  - E-mails were deleted
  - Computer appeared to have been scrubbed.
- Armed with solid information about this theft we were able to call the FBI for help. They began an investigation immediately.
- Without our internal evidence we wouldn't have been able to stop Lee. He would be in China today with our formulas and 44 Gigabytes of our sensitive data.



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## We got lucky!

- Valspar's "security readiness" was very typical.
- Like most companies Valspar had reasonably good security against outside intrusions, but little security against a "trusted employee."



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## We got Lucky (example policy)



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“[System User will not] introduce any "back door", "time bomb", "Trojan horse", "worm", "drop dead device", "virus", "preventative routines", or other computer software routines designed: to permit access to or use of Systems by User...to disable, modify, damage or delete information found in the Systems...or to perform any other similar actions. (The Coca Cola Company Network Access Agreement)



# Trade Secret definition

- A “**trade secret**” is any information that derives independent economic value from not being generally known or readily ascertainable.
- Subject to reasonable efforts to maintain secrecy.

## **Pricing Information/Cost Data**

Marketing Plans

Customer Lists

Special Customer Needs

Names of Suppliers

Organization charts

## **Formulas**

Raw Materials

Processes

Engineering Plans

Specifications

Unpublished Discoveries

R & D Strategic Plans



# CPR

## Classify

- Special Control
- Confidential
- Internal Use Only
- Public

## Protect

- “Need-to-know” access
- Focus on important Trade Secrets

## Report

- Monitoring / security tool



# Classify



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“Guidelines for Disclosure of Imation Confidential Information and Third Party Confidential Information Possessed by Imation. Before disclosing Imation’s confidential information, you must determine whether disclosure or use is necessary and consult Imation Legal Affairs.” (All Functional Roles - Business Conduct Policy)



## Focus on Important



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"[Landfill] will be collecting data consisting of collection site addresses from haulers who tender refuse for disposal at the Sunshine Canyon Landfill....Some haulers have advised that collection site addresses [are] trade secrets. [Landfill] will release the collection site addresses...." (Trade Secret Policy. Governing Disclosure of Waste Origin Information Collected Pursuant to the Waste Disposal Origin Reporting System at the Sunshine Canyon Landfill)



# Complex Information Flow

- Classification is only the first step.
- After you identify and classify your most important information you will then still need to identify all the ways that that information moves throughout your organization.
- This will not be easy ....

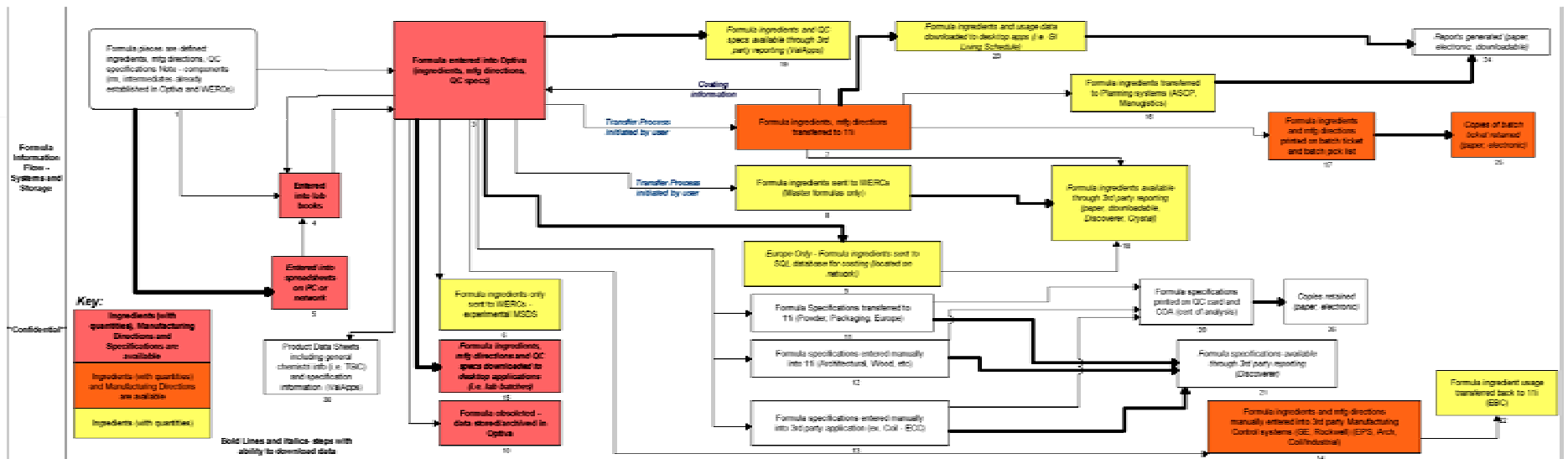


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# Information Flow Map



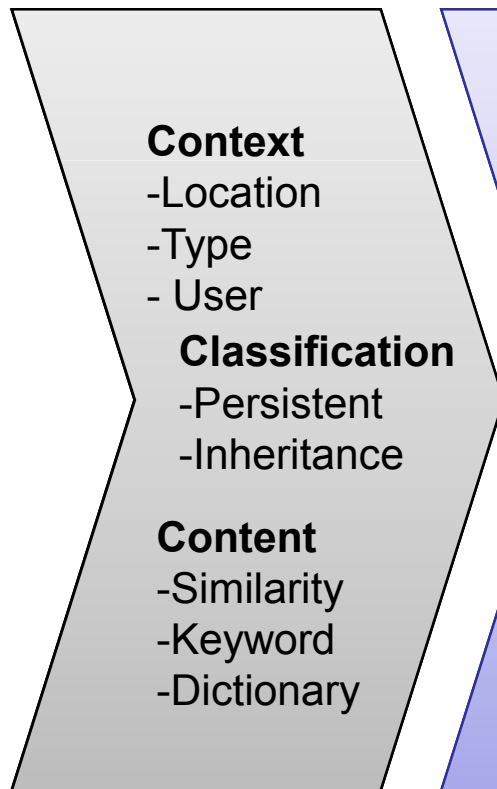
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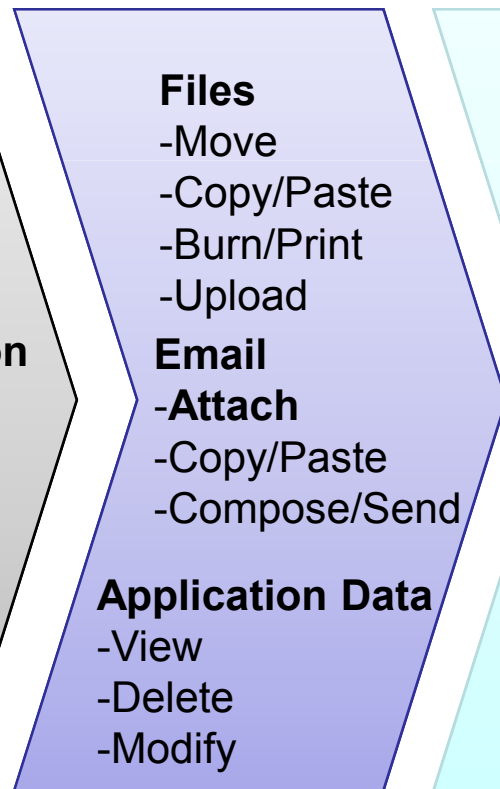
# Data-Centric Process Overview



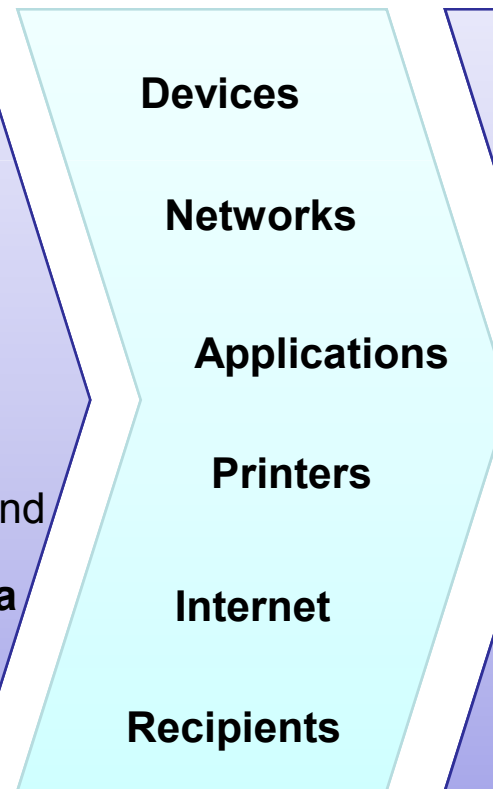
## DISCOVERY What & where is Sensitive Data?



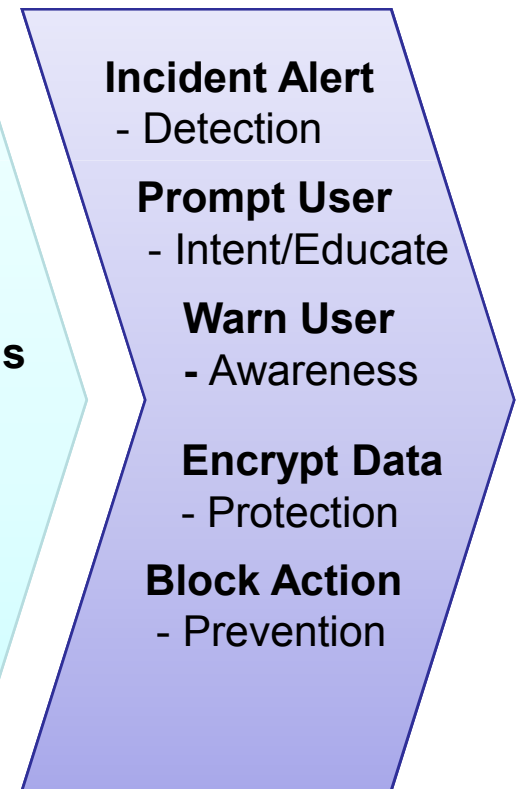
## ACTIVITY What is the User Doing With It?



## DESTINATION Where Is the Data Going?



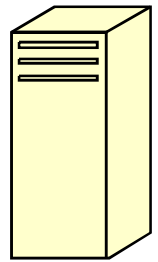
## CONTROL What action is appropriate?



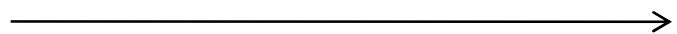
# Digital Guardian



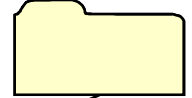
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1. Extract



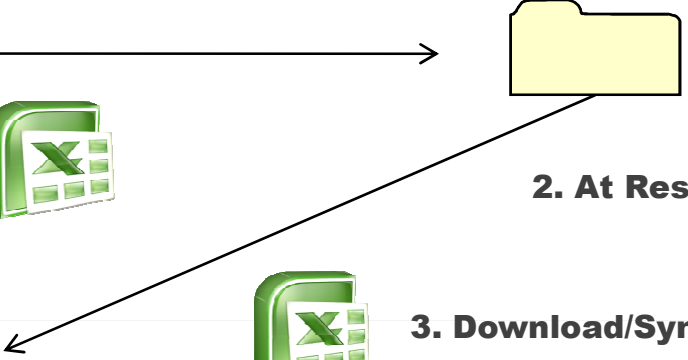
Windows File Servers



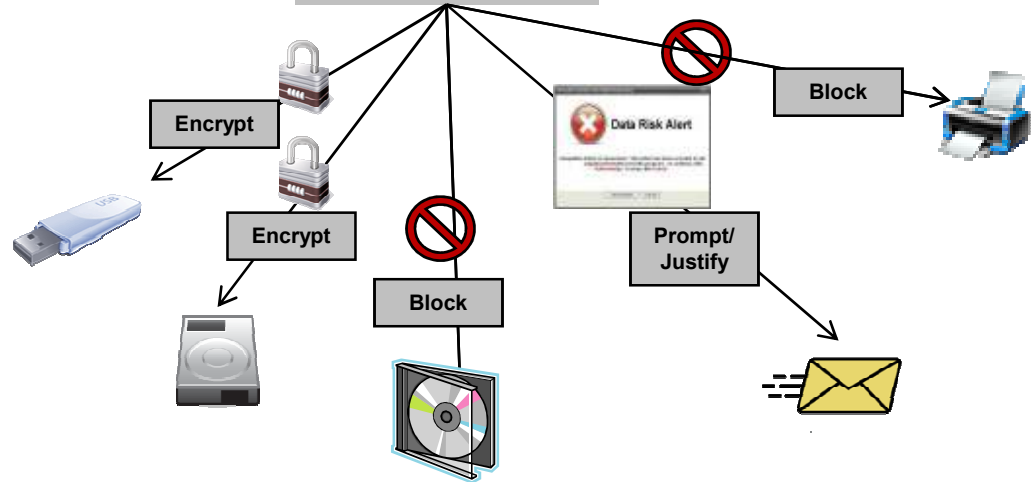
2. At Rest



3. Download/Sync



Windows Workstations



- Digital Guardian**
- Monitoring
  - Controls
  - Classification
  - Encryption

## Policy – Clean Desk



"It is generally accepted that a “clean” desk is a sign of efficiency and effectiveness; a neat desk also serves to keep customer and bank information secure....[Put] away documents or electronic media containing customer and proprietary bank information whenever an extended absence (i.e., lunchtime, break, committee meeting, etc.)....Always clear your desktop before you go home....”

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**Be narrow, Be specific**

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**Trade Secrets**

**First Amendment**

# Is the Horse Out of the Barn?



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A barn?  
Are you kidding me?  
A BARN?  
They can't even  
keep the doors  
closed!

# Is the Horse Out of the Barn?

- Depends on facts
- Depends on jurisdiction
- ***Act quickly!***



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