

# Chapter 6. Investigations and Information Gathering

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Chapter learning objectives:

- What are the requirements agencies must meet to investigate?
- What are records?
- What are reports?
- When may agencies obtain search warrants?
- When may citizens refuse to supply information?
- What are inspections?
- Why do businesses comply with agencies?
- Which cases uphold agency powers to investigate?

# Chapter 6. Investigations and Information Gathering

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Tools for carrying out the executive powers of an agency

- To enforce regulations
- Ensure regulated industry's compliance with regulations
- Limited by Constitution
  - Fourth Amendment: Unreasonable Search and Seizures
  - Fifth Amendment: Self-incrimination

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## Examples:

OSHA requires business keep records on work-related illnesses and injuries

IRS requires businesses keep records of its employees (note difference between this and simply retaining records to justify deductions)

FTC requires records regarding trade practices

EPA requires lists of hazardous wastes used and discharges of pollutants

# Requirements for Gathering Information

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Three conditions for administrative agencies to gather information:

- The business or person falls under the jurisdiction of the agency
- The means of collecting the information and sending it to the agency must be reasonable, and
- The information qualifies as public interest

# Requirements for Gathering Information

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- The business or person falls under the jurisdiction of the agency

Note: Expanded definition - applies to entities connected to businesses directly under jurisdiction.

# Requirements for Gathering Information

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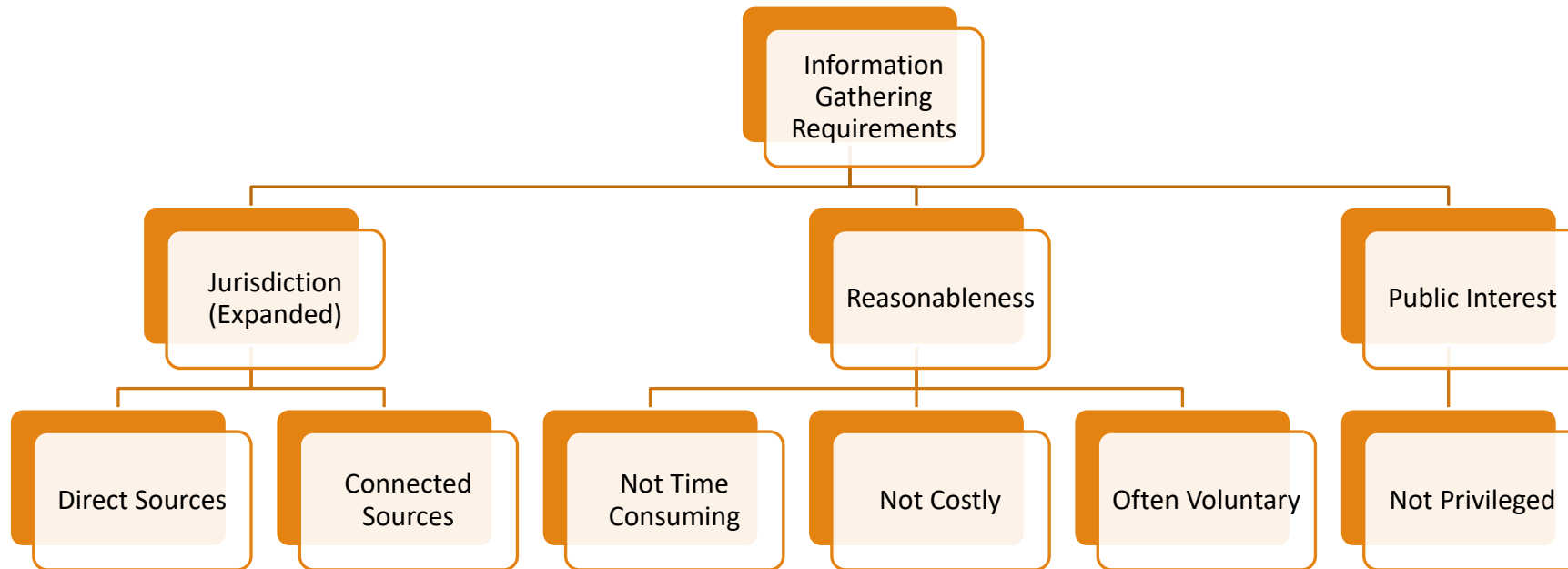
The means of collecting the information and sending it to the agency must be reasonable.

- Reasonable time consumption -
  - Seldom found unreasonable - need to show disruptions of normal operations of business
- Reasonable cost
  - Seldom found unreasonable - need to show costs have real impact relative to operating budget

→ Most people voluntarily comply because they want the license, certification, etc., offered by the agency.

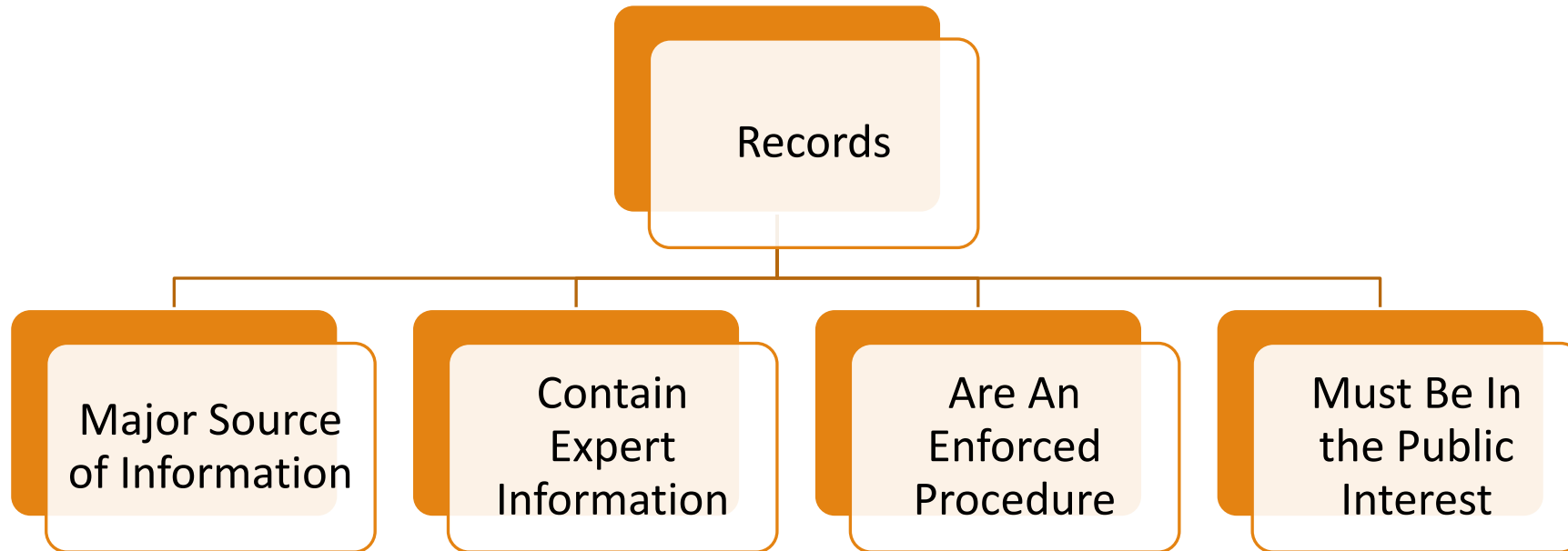
# Information Gathering Requirements

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# Pertinent Data on Records

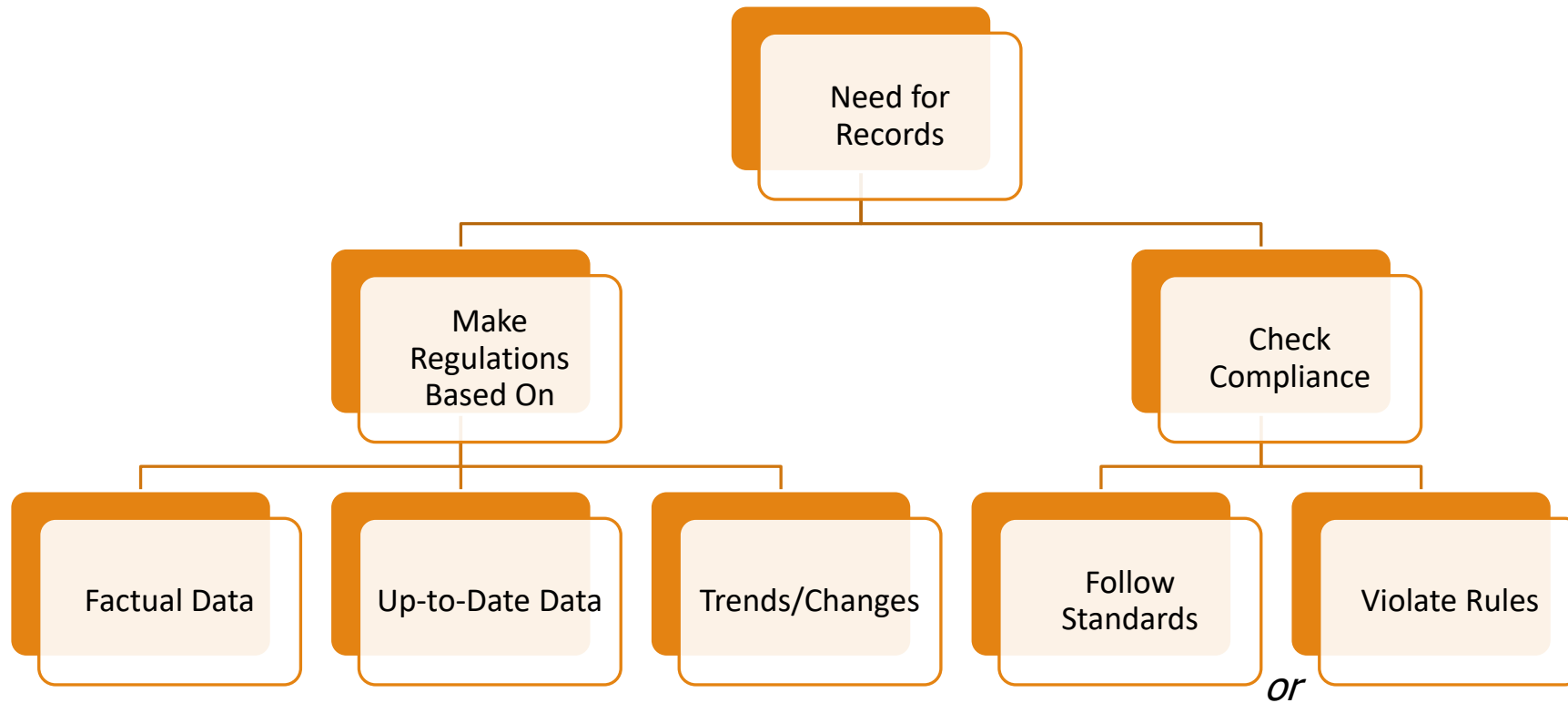
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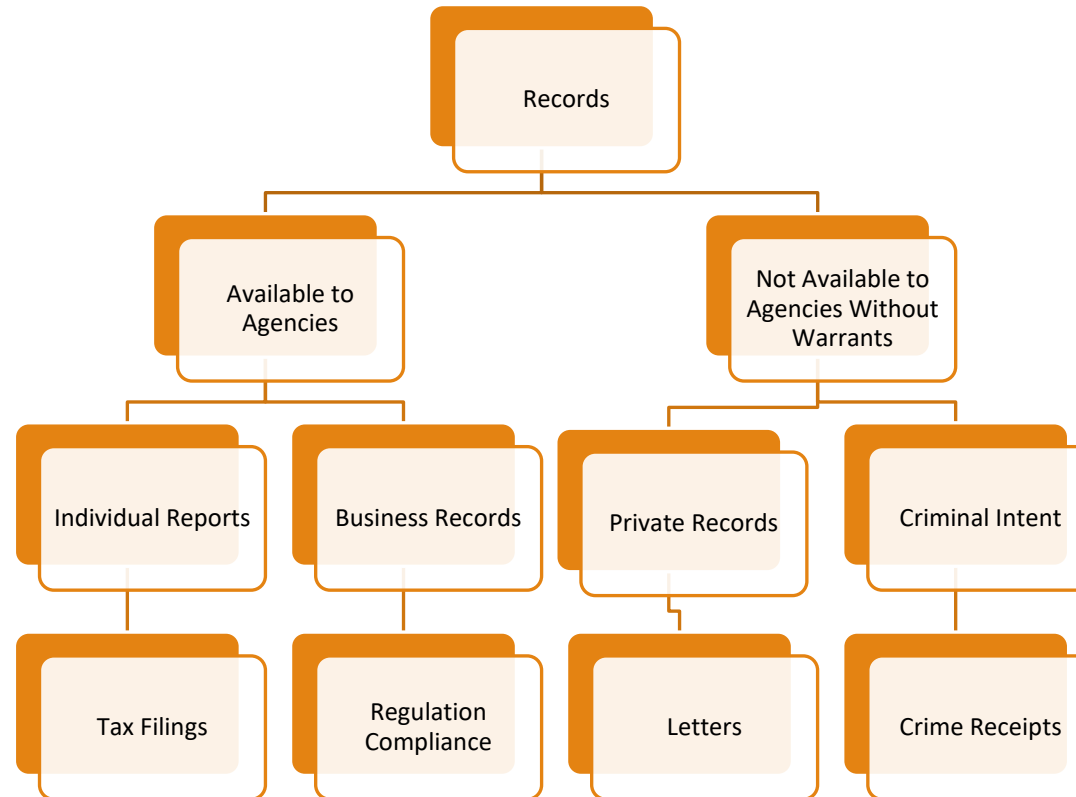
# Need for Records

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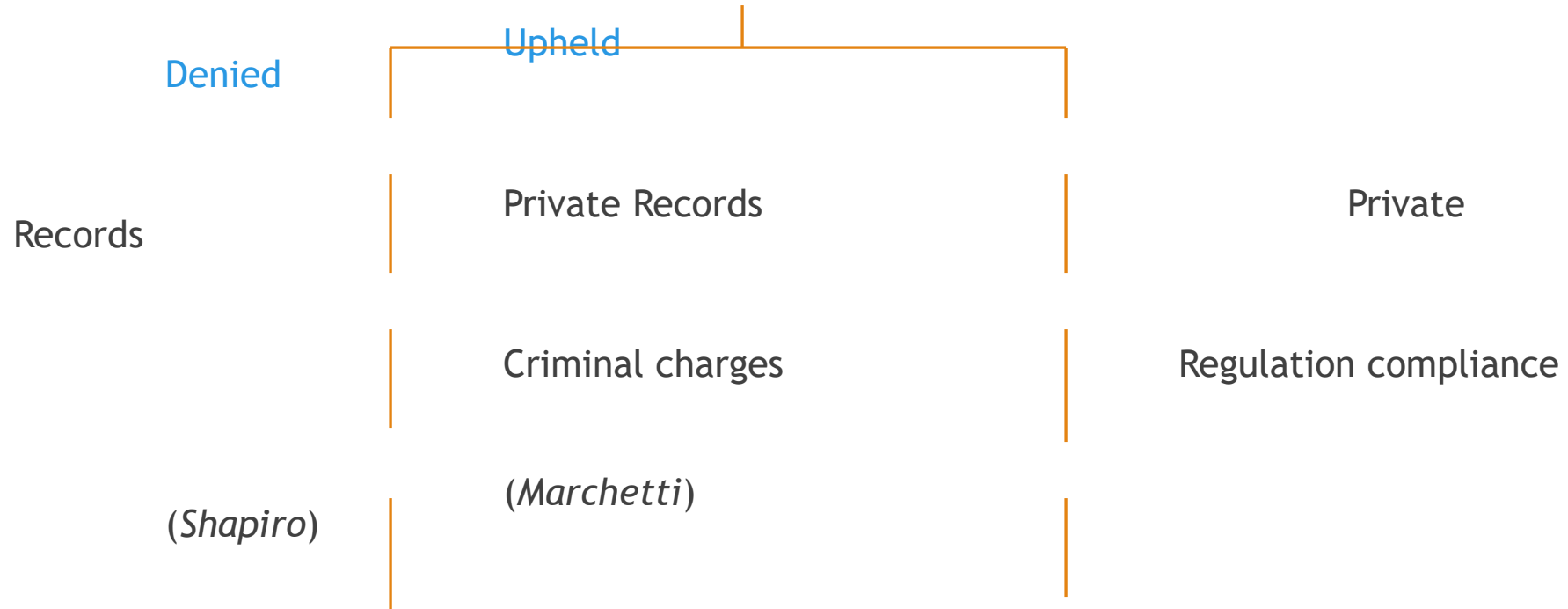
# Records Accessible to Agencies

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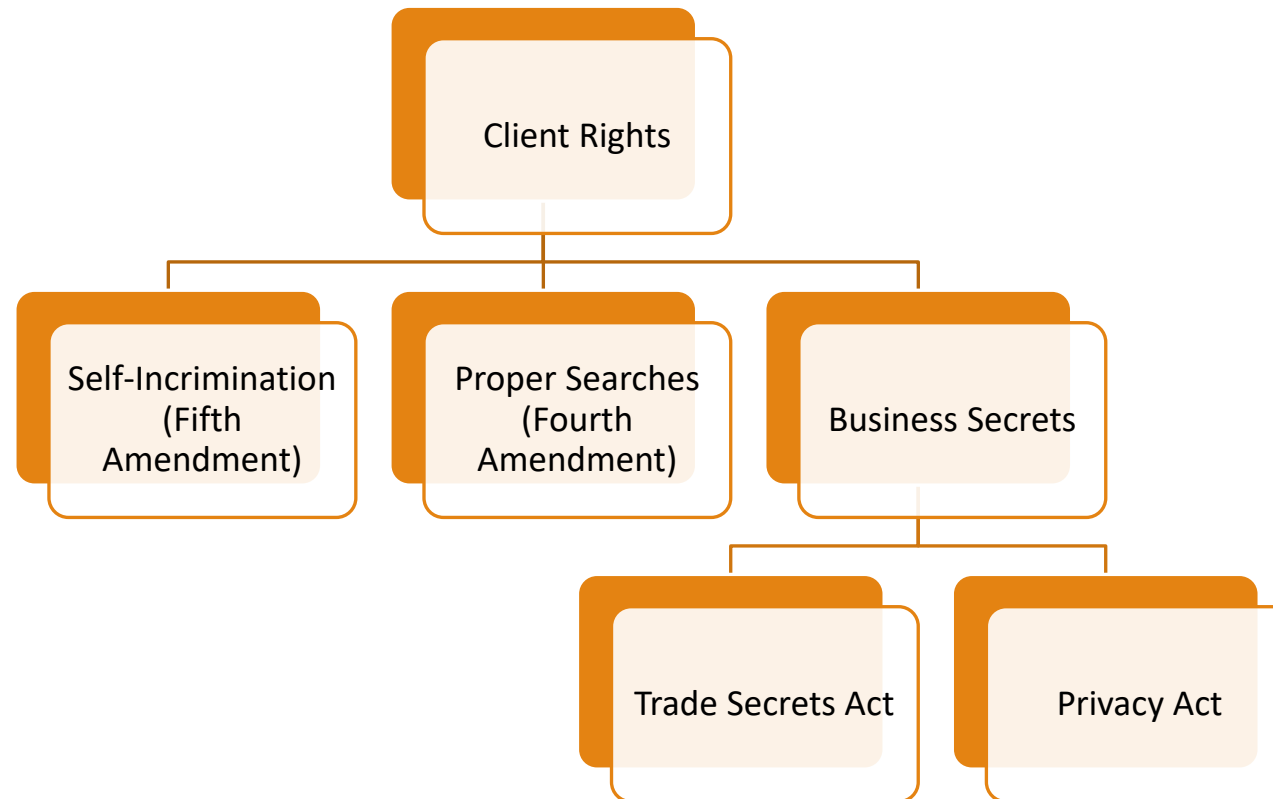
# Application of Fifth Amendment

Fifth Amendment



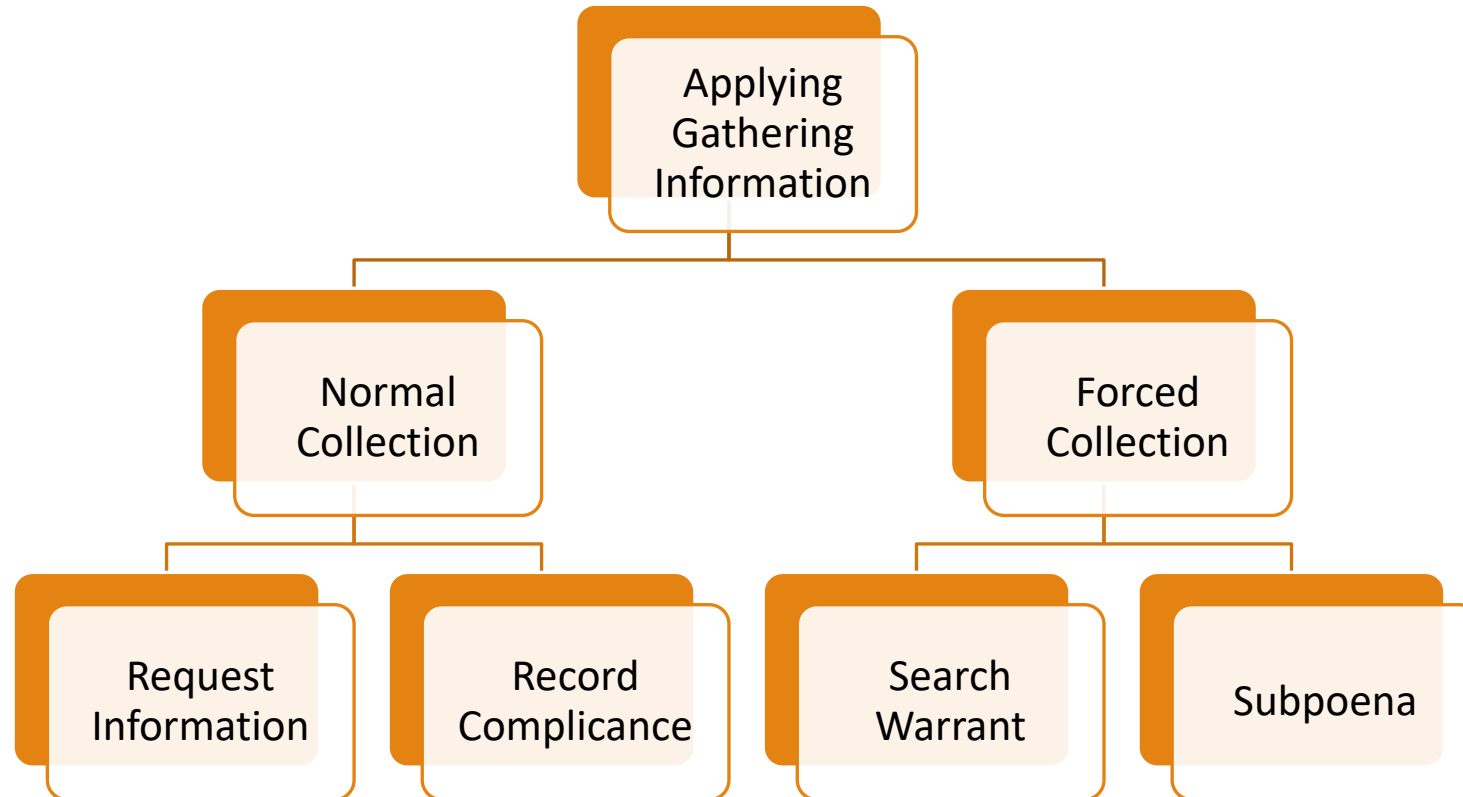
# Client Rights in Supplying Records

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# Agency Gathering Information

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# Search Warrants

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Operates the same as in criminal law, but the standards for probable cause are less stringent.

- Reasonable legislative or administrative standards for conducting an area inspection vary with program being enforced.
- E.g., inspection of property for code violations can be justified just by the passage of time, the nature of the building
- Do not necessarily depend on specific knowledge of particular location. (Health inspection, OSHA)

# Subpoenas

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Issued by court unless statute give agency the authority

Note *subpoena duces tecum*.

Will be upheld if

- Within agency's investigatory realm
- Not unduly burdensome or indefinite
- Information is reasonably relevant

## Harpooned Sharks for Chapter 6: One Shark Harpooned!

But, only one of the two sharks who were playing around have returned.

