# HUMANS, MACHINES, AND THE LAW

## AI Compliance for Washington Cities and Counties

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OGDEN MURPHY WALLACE
ATTORNEYS

WCMA
Washington City/County Management Association
A State Affiliate of ICMA

# Agenda

Part 1: AI Basics and Legal Foundations

What is AI?

General Risks & Best Practices

Part 2: AI for Municipalities

Legal Landscape

Policy Considerations

Part 3: Questions

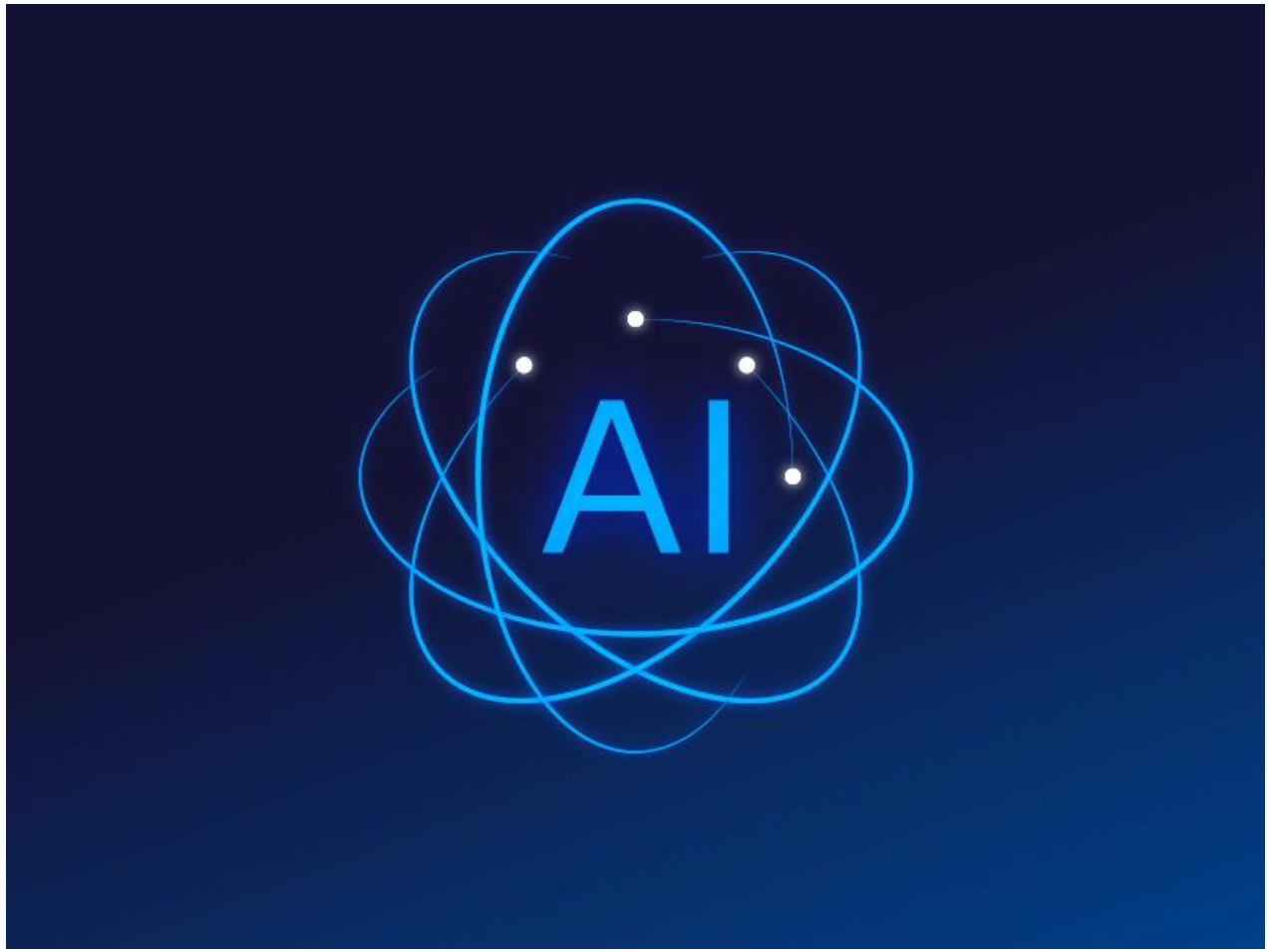
Part 4: Hypotheticals

# AI BASICS & LEGAL FOUNDATIONS

# What is Artificial Intelligence?

# What is Artificial Intelligence?

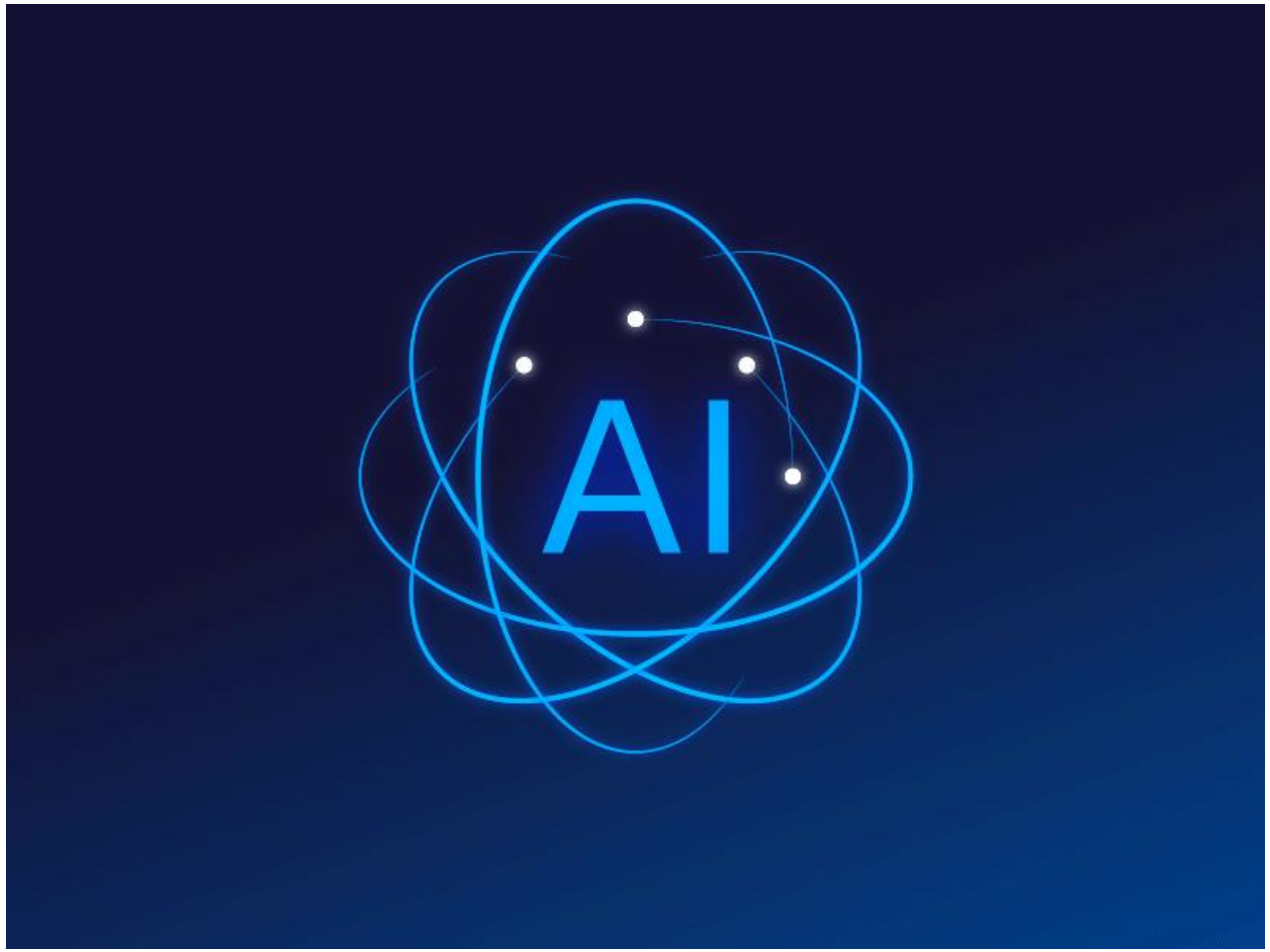
A machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments.



# What is Artificial Intelligence?

Artificial intelligence systems use machine and human-based inputs to:

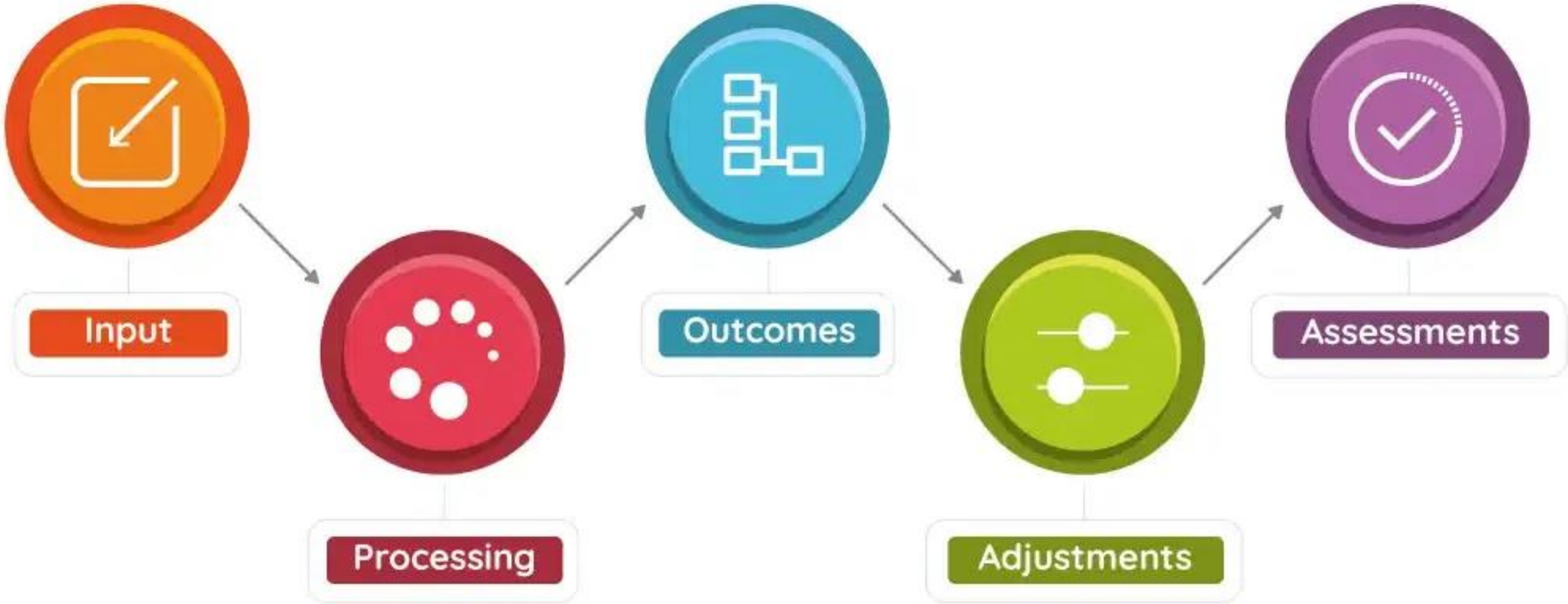
- Gather information from both real-world and digital environments;
- Automatically turn this information into models through analysis; and
- Use those models to suggest possible actions or decisions.

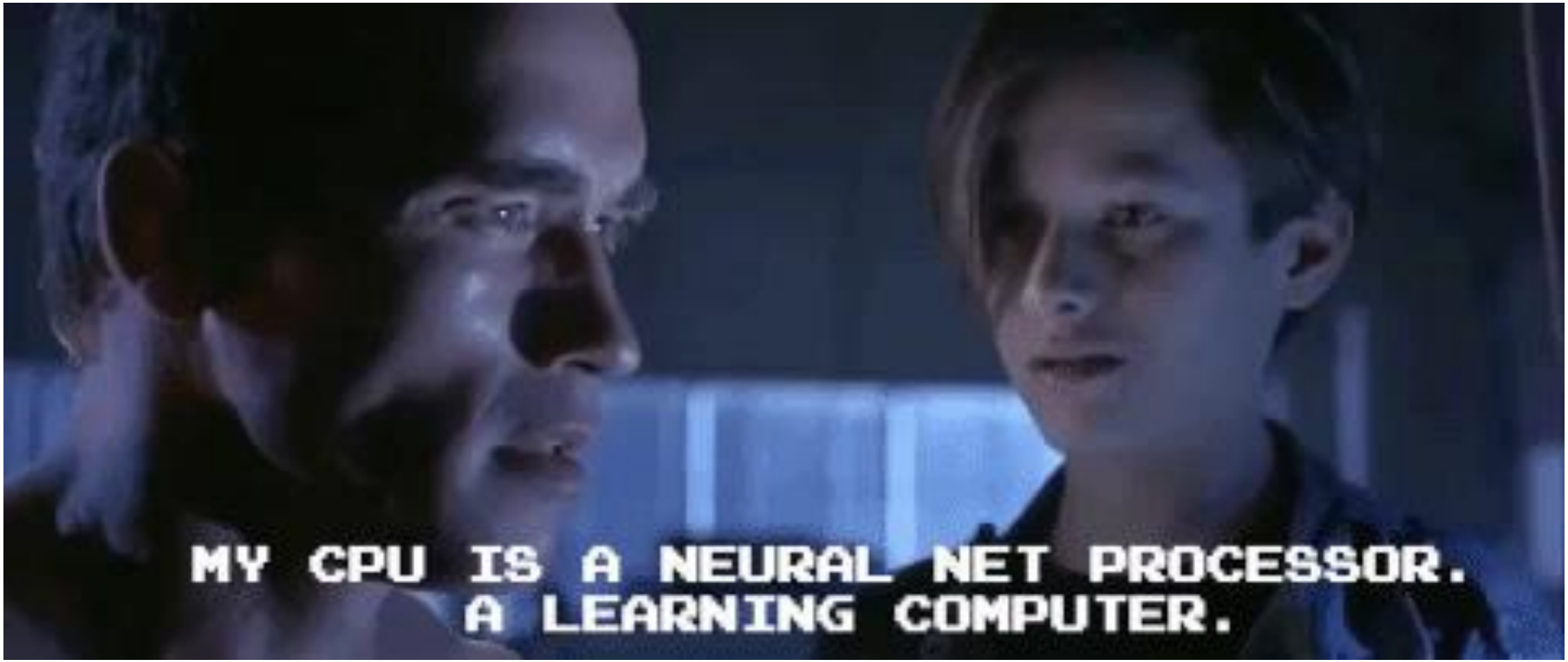


# What is Generative AI?

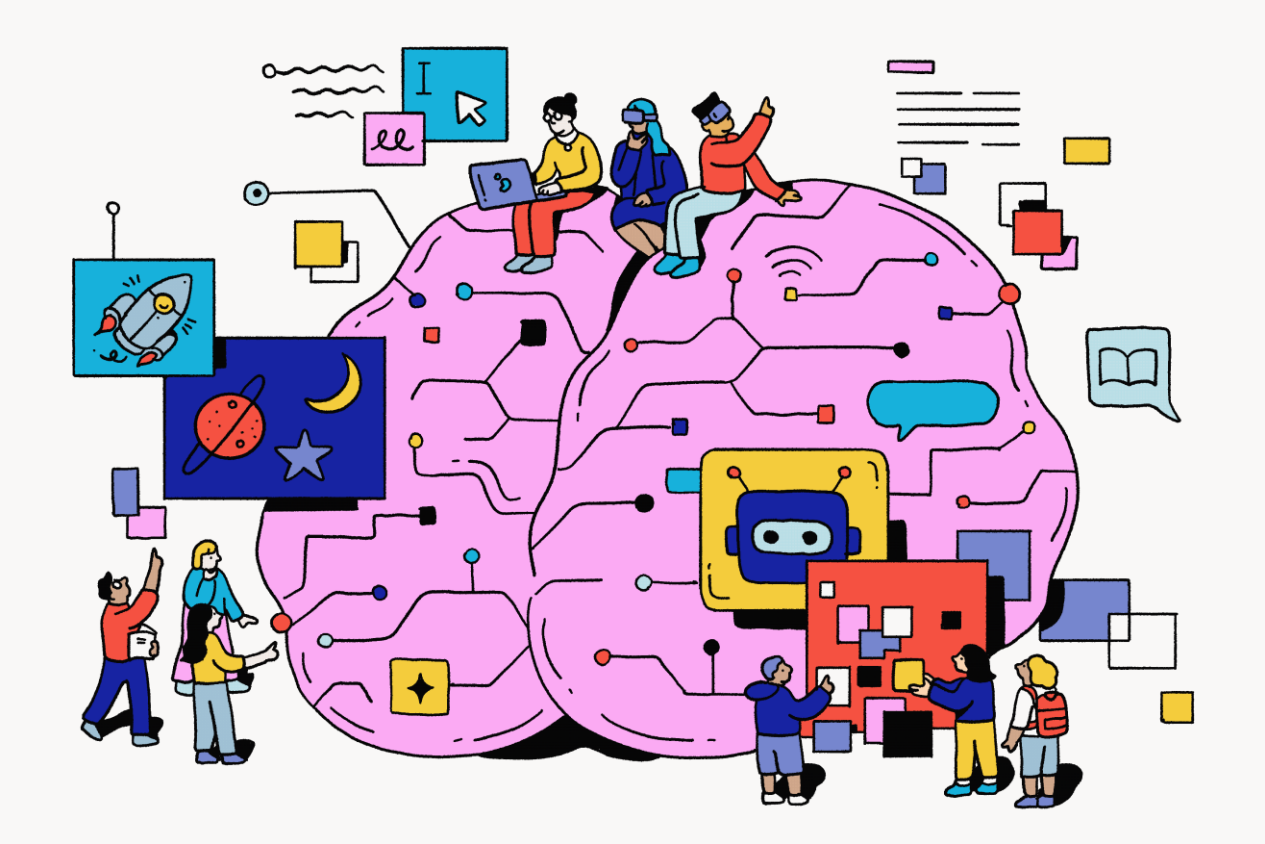
A technology that can create content, including text, images, audio, or video, when prompted by a user. Generative AI systems learn patterns and relationships from large amounts of data, which enables systems to generate new content that may be similar, but not identical, to the underlying training data.

# How AI Works




MY CPU IS A NEURAL NET PROCESSOR.
A LEARNING COMPUTER.

# Common Uses



- Drafting & writing assistance
- Research assistance
- Data analysis
- Document summarization
- Note taking/recording and summarizing meetings
- Surveillance and law enforcement
- Personnel evaluation

# Commonly Used AI Tools

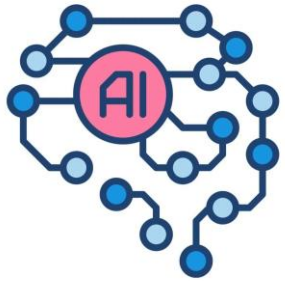
## ChatGPT

- Open source
- Data:
  - **Automatically uses data to train** (including PII)
    - Unless opt out
  - Able to opt out of data collection
    - Mindful of IP and user retention
- Storage:
  - Save chats in designated account and **retains data indefinitely**

# Commonly Used AI Tools

## Copilot

- Proprietary
  - Within Microsoft tools
- Data:
  - Dependent on licensing agreements
    - Microsoft 365 (block license)
    - Copilot Studio (each user)
    - Copilot Pro (subscription)
- Storage:
  - **Prompts and responses may be retained for 30 days**



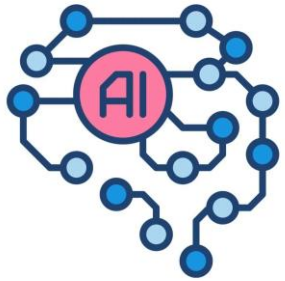

## Google Gemini

- Open source and proprietary (depending on model)
- Data:
  - Uses information to tailor responses
  - Does not use input or workspace/webpage content to train AI models without permission
- Storage:
  - Prompts and responses **may be retained if enabled**
    - Typically held for **48-72 hours**

# Commonly Used AI Tools

## Grammarly

- Proprietary
- Data:
  - Uses non-personal data to refine features
  - Prompt history shows only prompts used in current application
    - i.e., prompts used in Microsoft Word won't show in Gmail history
  - Device specific
- Storage:
  - **Temporarily stores content for analysis**




## HireVue

- Proprietary
- Data:
  - Compiles input into a ranking of hire-ability
    - **Risk of bias** (use of speech patterns, etc.) in decisions
- Storage:
  - The entity using the system owns the collected data
  - HireVue **stores the data for a retention period**

# AI in the Workplace

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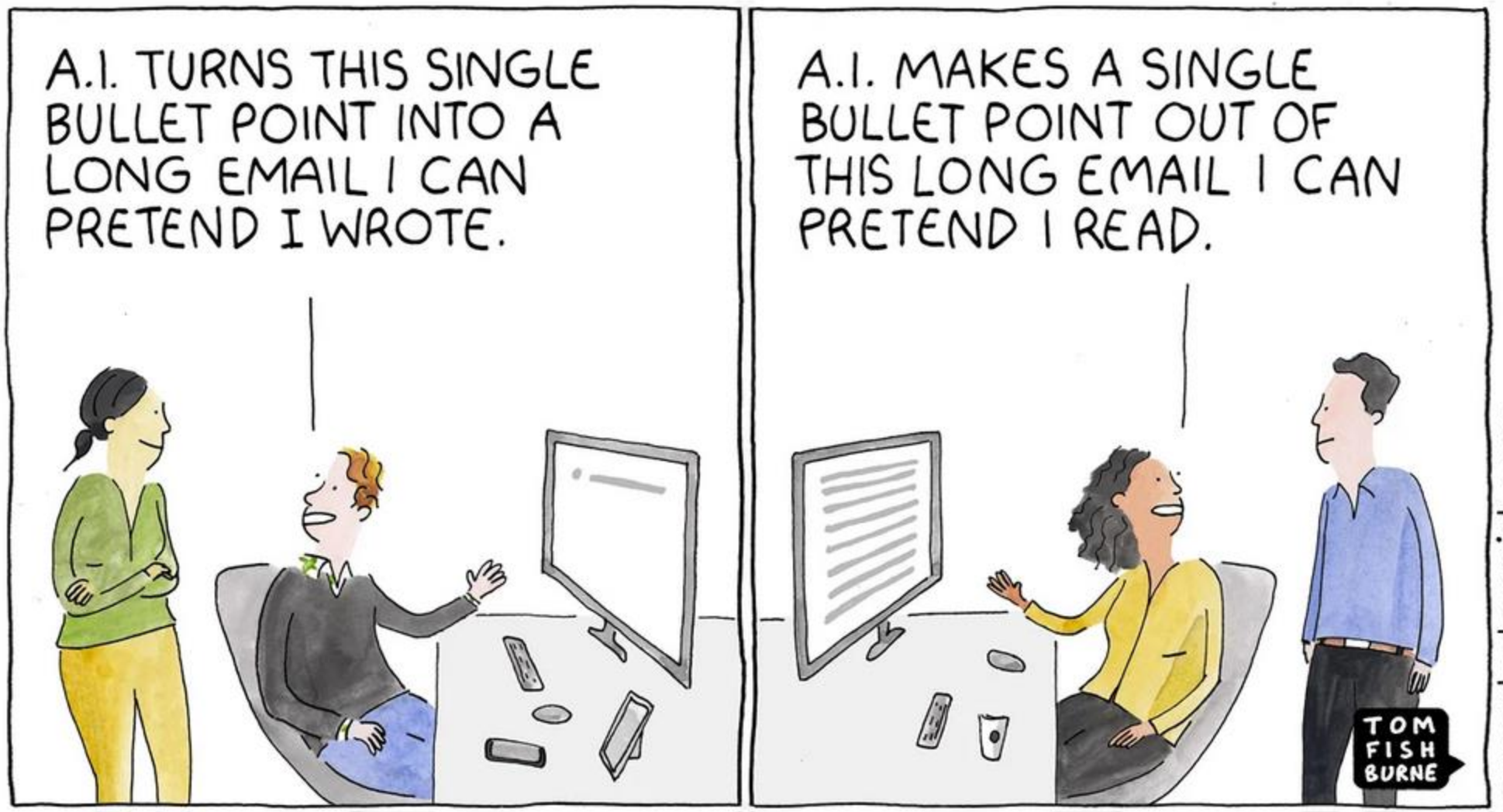


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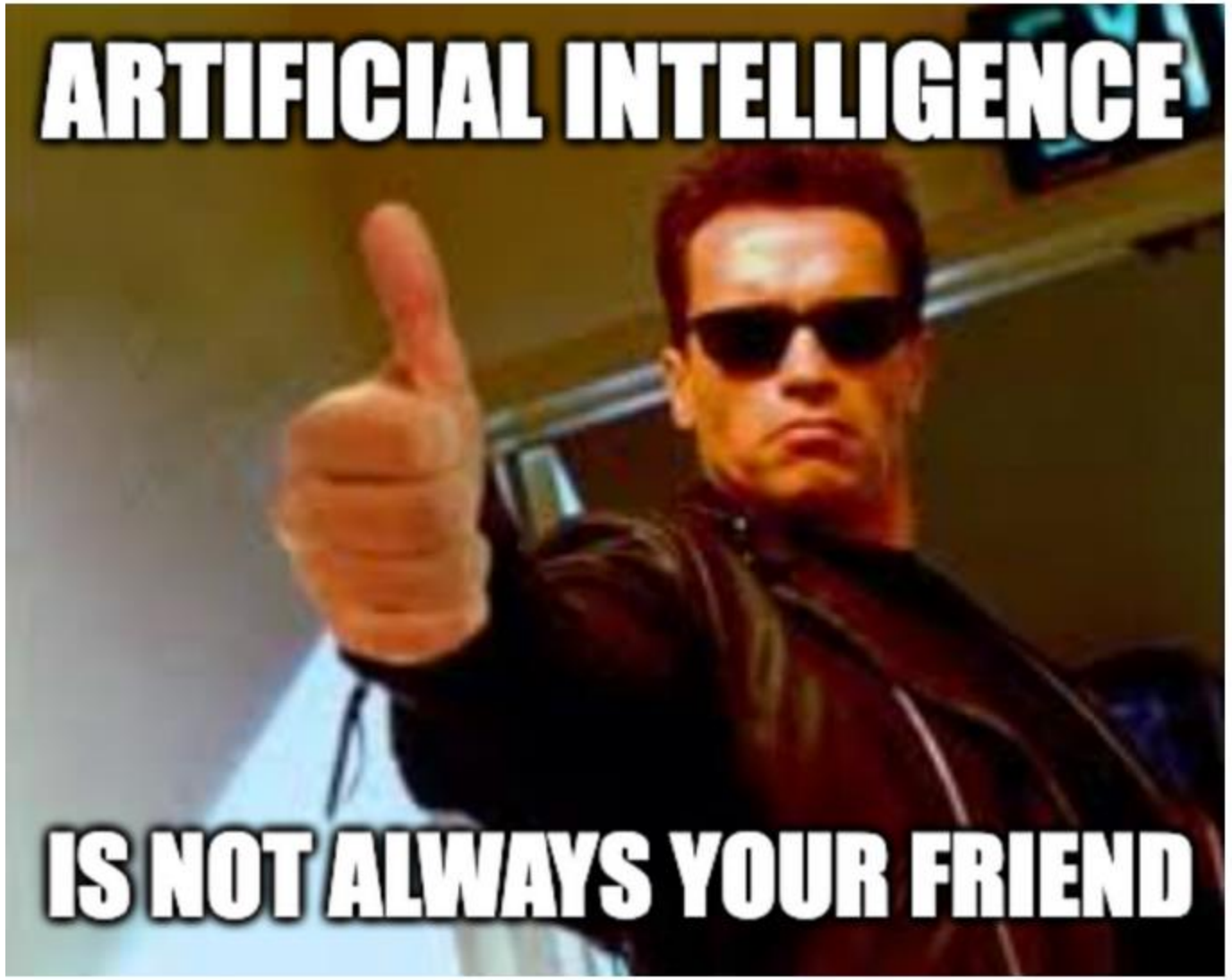
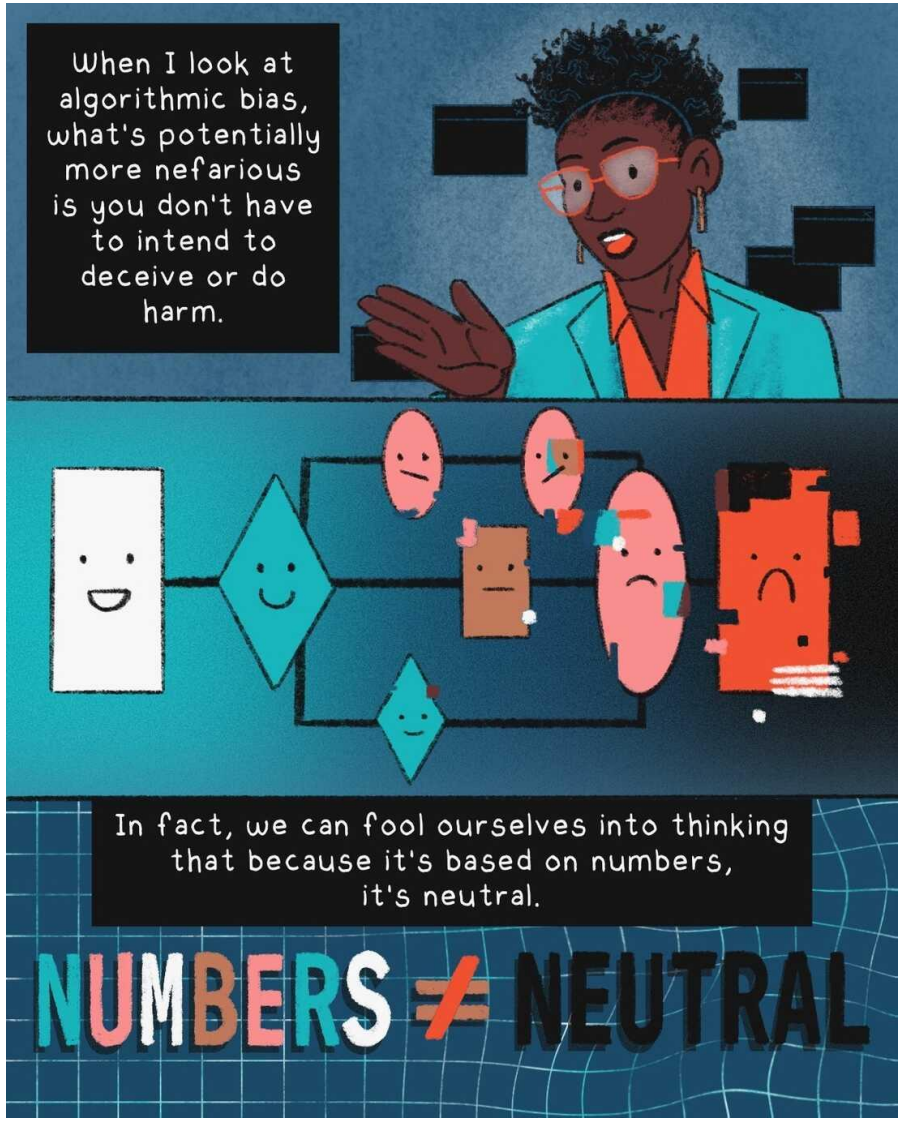
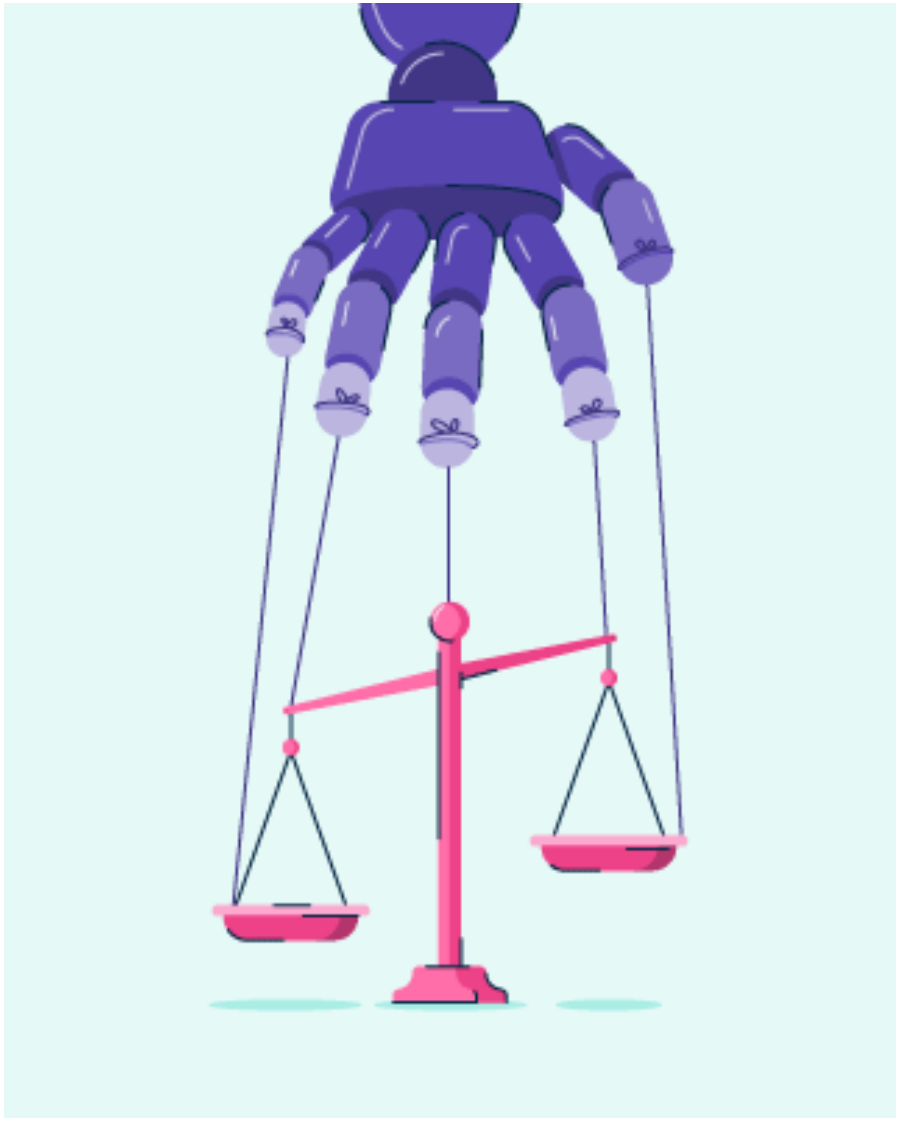
# General Risks of AI



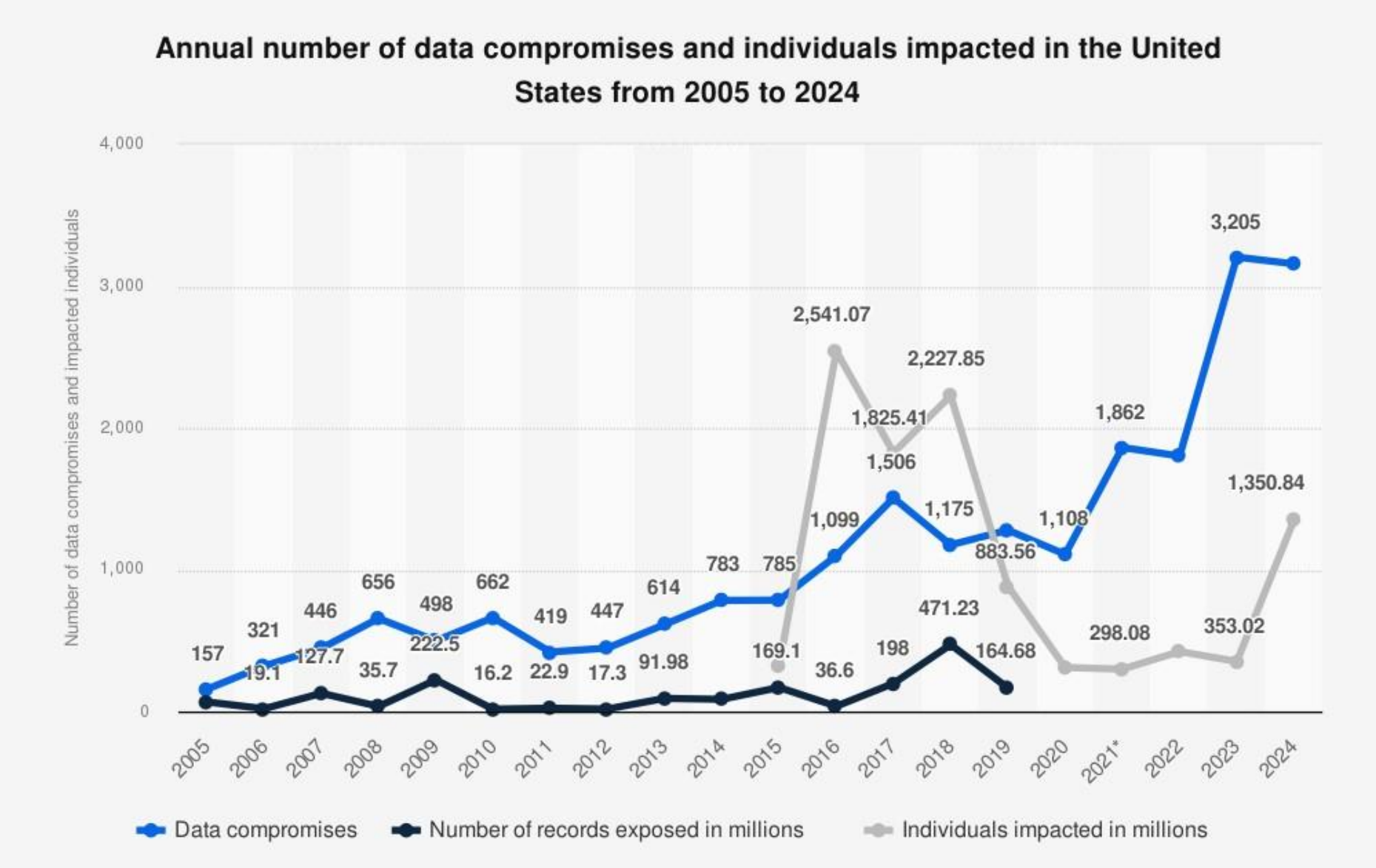
# General Risks: Algorithmic Bias



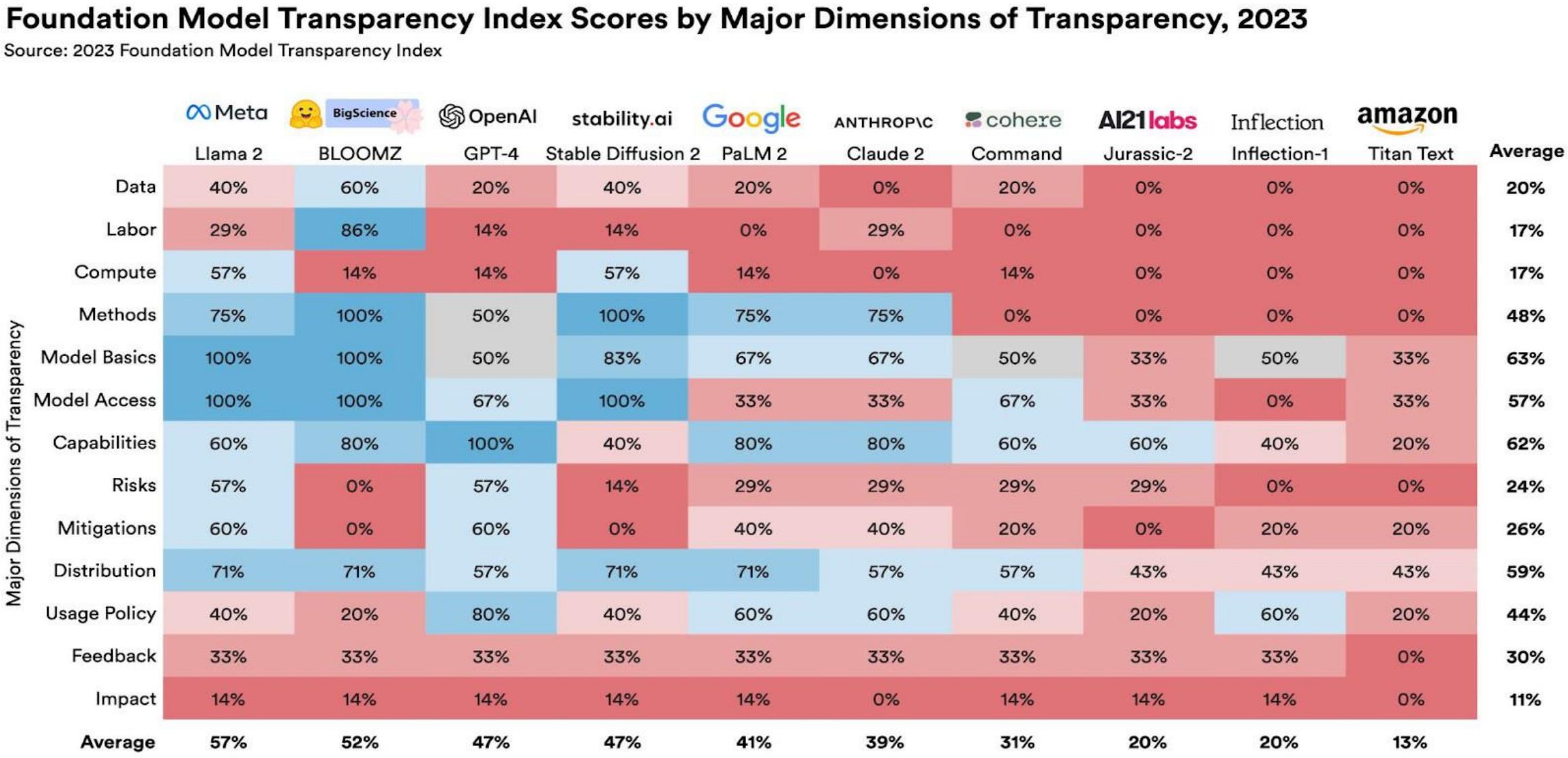



# General Risks: Erroneous Outputs

# General Risks: Disclosure of Sensitive/Confidential Information



# General Risks: Lack of Transparency/"Black Box" Outputs



# Best Practices to Mitigate Risk

- Require human-in-the-loop review and editing
- Attribute AI-generated content
- Avoid entering sensitive/confidential data
- Limit AI use to enterprise-approved tools
- Adjust settings to maximize privacy
- Vet tools through legal/IT channels
- Develop internal guidance for staff

# AI FOR MUNICIPALITIES

# Legal Landscapes for Local Governments: Federal

- Current policy approach emphasizes **deregulation** and **speed**
- Existing safeguards around **civil rights** and **privacy** remain

# Legal Landscapes for Local Governments: State

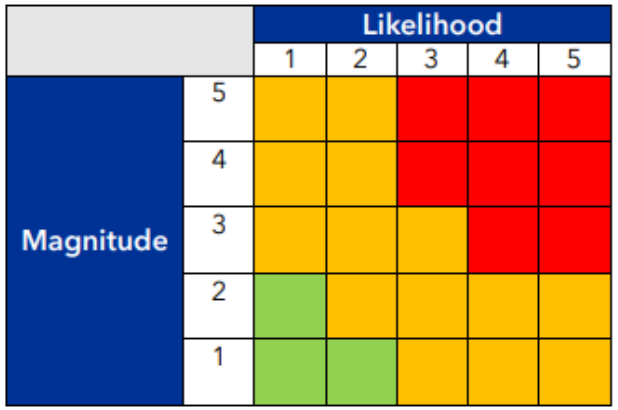
- **Executive Order 24-01:** Directs state agencies to use AI ethically and transparently.
- **WaTech Guidelines**: Interim policies on generative AI use, procurement, and risk management.
- **Attorney General's AI Task Force:** Multi-stakeholder group assessing risks, equity, transparency, and workforce impacts.
- **Secretary of State:** Addressing public records created through AI and Public Records Act applicability.

# Legal Landscapes for Local Governments: Executive Order 2024-01

- Policy development for State Agencies related to AI and specifically high risk AI systems

- A **high-risk AI system** is a system using AI technology that creates a high risk to natural persons' health, safety or fundamental rights.

- When determining whether an AI system is high-risk, consider:
  - The intended use and operating context
  - Data characteristics
  - Systems characteristics and safeguards




| Magnitude | Likelihood |
|---|---|
| **1 - Negligible**. No foreseeable direct or indirect impact to natural persons. | **1 - Remote or improbable**. Very low chance of occurring. |
| **2 - Low**. Any impact to natural persons is very unlikely to impact health, safety or fundamental rights. | **2 - Unlikely**. Low chance of occurring. |
| **3 - Moderate**. Some impact to natural persons that may include indirect impact to health, safety or fundamental rights. | **3 - Possible**. Moderate chance of occurring. |
| **4 - Significant**. Major effect causing substantial harm or disruption to health, safety or fundamental rights. May include direct impact in individual circumstances, or indirect, systemic impacts. | **4 - Likely**. High chance of occurring. |
| **5 - Severe or catastrophic**. Extreme impact resulting in serious harm, injury or violation of fundamental rights. | **5 - Probable**. Very high chance of occurring. |

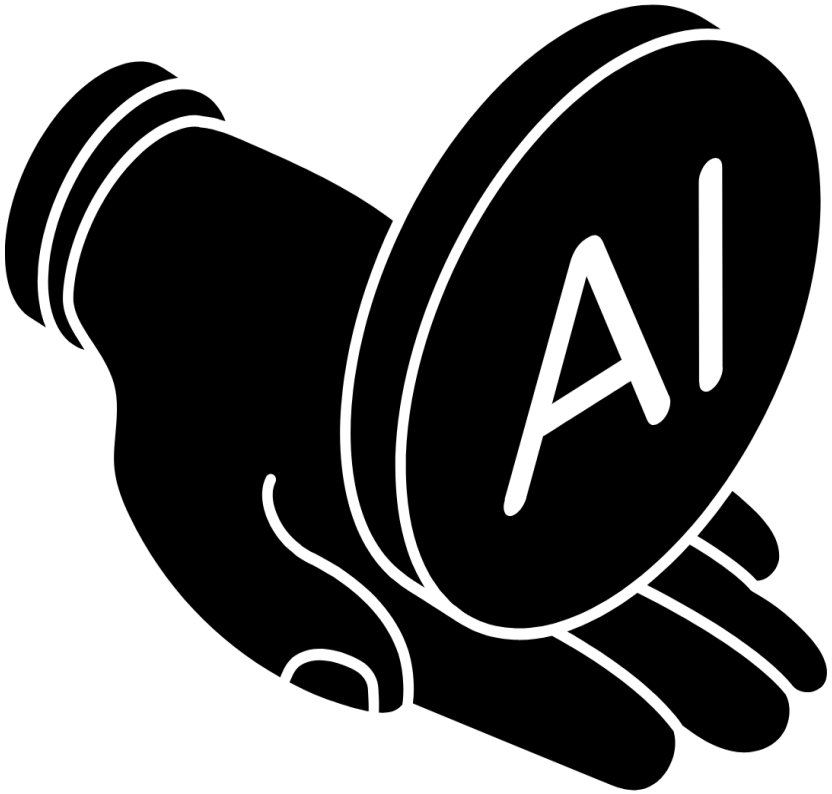
# Legal Landscapes for Local Governments: WaTech Interim Guidelines

- All content generated by AI should be reviewed and fact-checked, especially if used in public communication or decision-making.
- AI content should be clearly labeled.
- Strongly advised not to integrate, enter, or otherwise incorporate any non-public data or information into publicly accessible generative AI systems.
- Classify data based on risk

WaTech
Washington Technology Solutions

# Legal Landscapes for Local Governments: Secretary of State

- Public Records Act applies to AI input and output.
  - If you are conducting business for your agency using AI, you are generating records subject to Public Records Act.
- There is no retention period for AI records.
  - It depends on the content and function of the record, not the format.




WASHINGTON
Secretary of State

# Public Records Act: Chapter 42.56 RCW

- Public record requirements under the PRA
  1) There must be a writing
     - "Writing" is defined to include traditional written records, photos, maps, videos, voicemails, webpages, emails, text messages, and social media content.

  2) The writing must relate to conduct of government or the performance of a governmental function.
     - Can be indirectly or directly related.
- AI inputs and outputs are public records if they relate to city/county business.
  - May include associated metadata.
- Applies even if content is created on personal devices or with personal accounts.
  - If content is related to city/county business, then it can constitute a public record subject to the PRA.

# Records Retention: CH. 40.14 RCW / CH. 434-662 WAC

- Must classify records by *content*, not tool used.
- Metadata and input/output threads may also qualify (like browser/search histories).
- Destruction before scheduled retention period ends is unlawful.

# Employment Law Considerations: AI in Hiring & Evaluation

May trigger **civil rights** or **due process** concerns


- EEOC settled its first AI hiring discrimination lawsuit in August 2023
  - EEOC sued 3 companies providing tutoring services on the basis that they violated the Age Discrimination in Employment Act of 1967 because the AI hiring program they used automatically rejected female applicants age 55 or older and male applicants age 60 or older, resulting in screening out over 200 applicants because of their age
- In 2018, Amazon ceased using an AI hiring algorithm after finding it discriminated against women applying for technical jobs; after being trained on a dataset of mostly men, the tool preferred applicants who used words that are more commonly used by men in their resumes, such as “executed” or “captured”

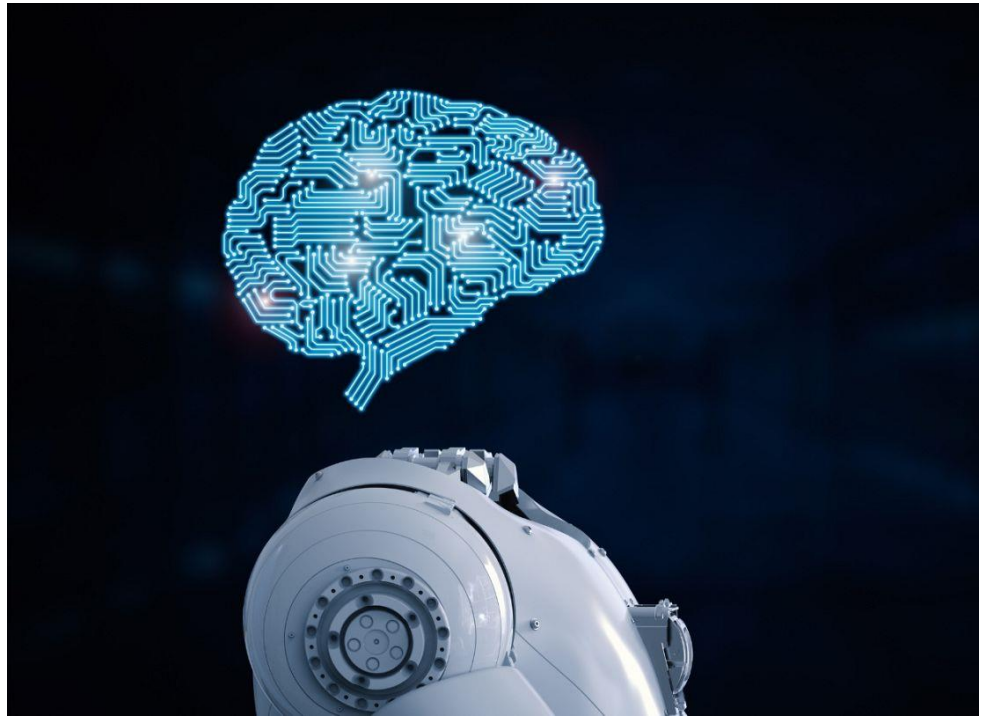
# Employment Law Considerations: Collective Bargaining Risks

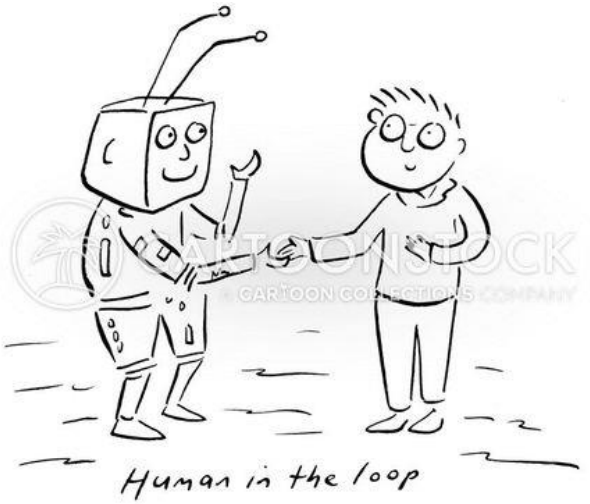
- HB 1622
  - Failed in 2025 but may return in 2026
  - Insight into legislative priorities
  - Would have required bargaining over AI use and how it fits in the workplace


- Even without HB 1622, unions may challenge adverse actions tied to AI use

# Key Policy Considerations

- Develop an internal AI use policy
  - *Examples: Seattle and Kirkland*
  - Approved tools list, IT/legal review
  - Mandatory human oversight
  - Attribution and disclosure standards
- Establish a records policy related to AI
- Create training & documentation protocols
- Monitor evolving laws & regulations





# QUESTIONS & HYPOTHETICALS

# Hypothetical #1: PRA and Records Retention

A city department begins using an AI-powered chat platform to draft internal reports and policy recommendations. Staff occasionally paste excerpts from citizen complaints and internal investigation summaries into the chat to "improve" the AI's output. Six months later, a Public Records Act request seeks all drafts and communications related to a controversial policy. The city realizes the AI system stores user inputs on third-party servers, and no records retention plan exists for that content. The city must now determine whether it can retrieve those records, whether disclosure is required, and how to account for potential gaps.

**If the city cannot retrieve all AI-generated drafts or prompts, does this constitute a PRA violation, and how should the city update its policies to cover use of AI and collect the inputs and outputs related to staff's use of AI?**

# Hypothetical #2: Algorithmic Bias in Hiring

A city's HR department adopts an AI-powered screening tool to rank applicants for a competitive firefighter recruitment process. The tool is trained on ten years of past hiring data — which unintentionally reflects historical underrepresentation of women and minority applicants. Over the next two hiring cycles, the percentage of women and minority candidates selected for interviews drops sharply. Community members raise concerns about discrimination, prompting legal review and media scrutiny.

**How should the city evaluate whether the AI tool is producing unlawful disparate impact, and what safeguards should be implemented to prevent biased outcomes in future hiring processes?**

# Hypothetical #3: Police Reports and Body Cam Footage

A police department pilots an AI-powered video analysis system to auto-generate summaries and incident reports from body camera footage. An officer relies entirely on the AI-generated summary for a charging referral, but the AI misidentifies a suspect and omits key contextual details from the video. When defense counsel obtains the raw footage through discovery, the discrepancy raises Brady disclosure concerns and calls into question the accuracy of prior reports generated by the system.

**What policies should be in place to ensure AI-generated summaries do not become the sole basis for charging decisions, and how can errors in reports be mitigated?**

# Hypothetical #4: Alternative AI Uses

Sheriff's department used AI to make a wanted suspect's photo appear to speak. Suspect was wanted for felony evading arrest and the Sheriff's department created a video clip of the suspect that made him appear to talk and share ways for the public to report the suspect to law enforcement.

**Should there have been a disclaimer added to the video? Did the suspect have a right to privacy?**

In an employment dispute hearing, an employee artificially generated a man to present his oral argument for him. The court had approved a request by the employee to submit a video for his case, but employee had not clarified that he intended to use AI to make an avatar to argue on his behalf.

**Should jurisdictions allow AI-avatars to be used in legal proceedings? What rules should be in place to ensure transparency and fairness?**

# THANK YOU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