

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: PROCEDURES FOR
FILING, SERVICE, AND
MANAGEMENT OF
HIGHLY SENSITIVE DOCUMENTS

HSD
GENERAL ORDER NO. 21-2

WHEREAS, in response to recent disclosures of wide-spread breaches of both private sector and government computer systems, federal courts are immediately adding new security procedures to protect highly sensitive documents filed with the courts;

THE COURT FINDS that, pursuant to [Rule 5\(d\)\(3\)\(A\)](#) of the FEDERAL RULES OF CIVIL PROCEDURE and [Rule 49\(b\)\(3\)\(A\)](#), of the FEDERAL RULES OF CRIMINAL PROCEDURE, good cause exists to require all parties to file certain highly sensitive documents outside the court's electronic filing system until further order of the court.

THEREFORE, IT IS HEREBY ORDERED that, effective as of the date of this Order and until such time as the court orders otherwise, the filing of certain highly sensitive documents shall be subject to the procedures and requirements set forth below. This General Order supersedes any and all inconsistent provisions in existing local rules or other general orders of this court.

1. Documents Subject to this Order

Highly Sensitive Documents (HSDs) contain information of a particular highly sensitive nature. Highly sensitive information (HSI) includes, but is not limited to, sensitive or confidential information that is likely to be of interest to the intelligence service of a hostile foreign government and whose use or disclosure by a hostile foreign government would likely cause significant harm. Very few documents filed under seal in federal court contain HSI.

- a. The court anticipates that sealed documents containing HSI may often be filed in cases involving the following.
 - 1) national security;
 - 2) foreign sovereign interests;
 - 3) criminal activity related to cybersecurity or terrorism;

- 4) ongoing law-enforcement investigations or intelligence-gathering operations;
 - 5) indictments or criminal complaints filed under seal, where the United States Attorney moves for such designation, for good cause shown;
 - 6) investigation of public officials;
 - 7) information that would put at risk the safety of public officials or the integrity of governmental operations;
 - 8) extremely sensitive commercial information likely to be of interest to foreign powers; or
 - 9) the reputational interests of the United States.
- b. Applications for electronic surveillance under Title III of the Omnibus Criminal Control and Safe Streets Act of 1998, including matters arising under 18 U.S.C. § 2518, are presumptively HSD.
- c. Documents presumed to be HSDs under paragraph 1 above do not require a motion before filing and should be filed as indicated in paragraph 3 below.

2. Documents Not Generally Considered to be HSDs.

The Court anticipates that the following types of sealed documents are unlikely to contain HSI:

- a. Presentence reports, pretrial release reports, probation violation reports, and documents related to such reports;
- b. Pleadings related to cooperation in most criminal cases;
- c. Social security records;
- d. Administrative immigration records;
- e. Qui tam complaints; and
- f. Most sealed filings in most civil cases.

If the document is **NOT** presumptively an HSD under this HSD General Order, a motion to file it as an HSD must be made under paragraph 4 below. Any dispute as to whether a document is an HSD shall be resolved by the presiding judge or, when no presiding judge is assigned, the chief judge.

3. Filing of Authorized HSDs

- a. A party filing a presumptive HSD or a document which has been designated by court order to be HSD shall submit to the clerk's office two physical paper copies of the HSD, the certificate of service, if applicable, and a copy of the court order authorizing the treatment of that document as highly sensitive, if applicable.

- b. Of the two physical paper copies of the HSD document that are being submitted, one is for the court record and one is for the presiding judge. No separate courtesy copy of the document is needed unless the presiding judge requests it.
- c. Requests by a filing party for a file-stamped copy of an HSD while this HSD General Order is in effect will not be granted unless the requesting party provides the clerk of court with a written request, an extra copy, and a self-addressed stamped envelope as part of the filing. For documents filed in person, the filing party must present the requested extra copy to be file-stamped at the time of filing.
- d. When filed in person, the required documents, unfolded, shall be submitted to the clerk's office in a sealed envelope marked "HIGHLY SENSITIVE DOCUMENT." The outside of the envelope shall be affixed with a copy of the HSD's caption page (with any confidential or sensitive information redacted).
- e. HSDs shall be submitted to the clerk's office in paper form in person, by U.S. Mail, or by a commercial delivery service (i.e., Federal Express or UPS). When HSDs and related motions are submitted for filing by U.S. Mail or by a commercial delivery service, the outer transmission envelope shall contain NO indication that the filing relates to an HSD. The outer envelope shall also be opaque so that the inner envelope is not visible through the outer envelope.
- f. The filing party shall serve the HSD on the other parties (if applicable) as follows:
 - 1) Civil cases - by any manner specified in [Rule 5\(b\)\(2\)](#) of the FEDERAL RULES OF CIVIL PROCEDURE except for service via the court's electronic filing system; or
 - 2) Criminal cases - by any manner specified in [Rule 49\(a\)\(3\)\(B\) or \(a\)\(4\)](#) of the FEDERAL RULES OF CRIMINAL PROCEDURE.
- g. The clerk's office will make a non-identifying docket entry in the court's electronic filing system indicating that a sealed document was filed with the court and will maintain the HSD in a secure paper filing system or stand-alone, air-gapped computer system.

4. Filing of Motions to Treat a Document as an HSD

- a. Represented parties
 - 1) A represented party shall submit to the clerk's office a motion to treat a document as an HSD and a proposed order in paper form following the procedures described above in paragraph 3. The motion shall explain why the proposed document constitutes an HSD under the criteria set out in paragraphs 1 and 2 above or

why it should otherwise be subject to the heightened protection for HSDs.

- 2) The filing party must present two physical paper copies of all filed documents. These documents should be packaged as specified above in sections 3a through 3e of paragraph 3.
- 3) The filing party shall serve the proposed HSD on the other parties as specified above in section 3f of paragraph 3 when applicable.
- 4) The court will issue an order on the motion. The clerk's office will make non-identifying entries on the court's electronic docket. The clerk's office will maintain orders granting a motion to treat a document as an HSD, the HSD, and documents related to the HSD in a secure paper filing system or in a stand-alone, air-gapped computer system.
- 5) The party filing a motion to treat a document as an HSD shall clearly indicate in the motion and in the proposed order who should be served with a copy of the order, including the filing party if the filing party is to be served with a copy of the HSD, HSD-related order, or other HSD related documents.

b. Pro se parties

- 1) Pro se parties shall submit to the clerk's office for filing a motion to treat a document as an HSD. The HSD sought to be filed and the certificate of service, if applicable, must also be submitted. The filing party must present two physical paper copies of all filed documents packaged as specified in sections 3a through 3e of paragraph 3.
- 2) The filing party shall serve the proposed HSD on the other parties as specified in section 3f of paragraph 3 when applicable.
- 3) The court will issue an order on the motion. The clerk's office will make a non-identifying entry on the court's electronic docket. The clerk's office will maintain orders granting a motion to treat a document as an HSD, the HSD, and documents related to the HSD in a secure paper filing system or stand-alone, air-gapped computer system.
- 4) The party filing a motion to treat a document as an HSD shall clearly indicate in the motion and in the proposed order who should be served with a copy of the order, including the filing party if the filing party is to be served with a copy of the HSD, HSD-related order, or other HSD related documents.

5. Service of Highly Sensitive Court Orders

- a. If the court determines that a document contains highly sensitive information, the clerk's office will serve paper copies of the order on the parties via U.S. Mail.
- b. Paper copies of HSD orders will only be served by the clerk's office on those the court clearly directs be served in the HSD-related order.

6. Removal of Existing HSDs or Highly Sensitive Cases from the Court's Electronic Filing System

- a. Upon motion of a party or upon its own motion, the court may determine that a document, case, or any portion of it, that has been filed electronically is highly sensitive and may direct that the HSD or case be removed from the court's electronic filing system and maintained by the clerk's office in the secure paper filing system, or a stand-alone, air-gapped computer system, described above.
- b. A party's motion to remove an HSD or highly sensitive case from the court's electronic filing system shall explain why such document or case is highly sensitive under the criteria set out in paragraphs 1 and 2 above or why it should otherwise be subject to the heightened protection for HSDs.

7. Objections to Filing Under These Procedures

- a. Disputes as to whether all or part of a document is an HSD and subject to this General Order may be raised by motion or under the procedures of the presiding judge and will be resolved by the presiding judge or, when no presiding judge is assigned, the chief judge or designee.
- b. Any party may object to a document designated as an HSD and file a motion to have it filed in CM/ECF.
- c. The challenged document will remain subject to these HSD procedures pending the court ruling on the motion. The motion must explain why the document should not be subject to protection as an HSD.
- d. If the court determines that a document should not be treated as an HSD, it will be filed and docketed into CM/ECF.

8. Filing Sealed Documents That are Not Presumptive HSDs or that Parties are not seeking to be Designated HSDs

- a. If this Order does not presumptively designate a document as HSD and the Filing Party is not moving for an order designating the document as an HSD, the court's regular procedures for filing public and sealed documents shall continue to apply.

- b. If some, but not all, of a document consists of or includes highly sensitive information, a redacted version must be electronically filed through CM/ECF.

9. Questions about HSD Filing Procedures

Any questions about how an HSD should be filed with the court pursuant to this General Order should be directed to the clerk's office, not the judge's chambers, by contacting the following persons: Case Administrator Supervisor Laura Guillot at (504) 589-7702, Criminal Magistrate Duty Unit Supervisor Dean Oser at (504) 589-7686, or Intake Supervisor, Stephanie Kall at (504) 589-7717.

NEW ORLEANS, LOUISIANA, this 19th day of January, 2021.


NANNETTE JOLIVETTE BROWN
CHIEF U.S. DISTRICT JUDGE