

January 21, 2021

JULIA C. DUDLEY, CLERK

BY: s/ A. Beeson
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA**

**IN THE MATTER OF:
PROCEDURES FOR THE FILING,
SERVICE, AND MANAGEMENT OF
HIGHLY SENSITIVE DOCUMENTS**

Standing Order No. 2021-01

In response to recent disclosures of widespread breaches of both private sector and government computer systems, the Judicial Conference of the United States has directed all federal courts to issue new security procedures to protect highly sensitive documents (“HSDs”) filed with the court.

The court finds that, pursuant to Federal Rule of Civil Procedure 5(d)(3)(A) and Federal Rule of Criminal Procedure 49(b)(3)(A), good cause exists to require all parties to file HSDs, as defined herein, outside of the court’s electronic filing system.

Therefore, it is hereby **ORDERED** that, effective as of the date of this Standing Order and until such time as the court orders otherwise, the filing of HSDs shall be subject to the procedures and requirements set forth below. This Standing Order supersedes any and all inconsistent provisions in existing local rules or other standing orders of this court.

A. Highly Sensitive Documents.

HSDs contain information of a particular sensitive nature likely to be of interest to the intelligence service of a hostile foreign government or similar malefactors and the use or disclosure of which could cause significant harm. The following documents will be designated as HSDs without further court order:

1. Applications for electronic surveillance under 18 U.S.C. § 2518.

The court may, on its own motion or on motion of a party pursuant to section C below and for good cause shown, direct that the following material be designated HSD:

2. Applications for search warrants prior to disclosure required by law, where the United States Attorney moves for such designation;
3. Sealed criminal complaints, where the United States Attorney moves for such designation;
4. Pleadings in criminal cases discussing ongoing and undisclosed cooperation;
5. Materials as to which disclosure could jeopardize national security or would pose a clear and present danger to life and limb or result in grave or extreme harm in a civil or criminal case; and
6. Materials as to which disclosure to a foreign power or its agents (as defined by 50 U.S.C. § 1801) would be unlawful under United States law or would substantially assist a foreign power or its agents in the development of that foreign power's competing commercial products or products with military applications.

That a document satisfies the legal criteria for filing under seal does not mean that it satisfies the conditions needed for designation as HSD. Documents will not be considered HSDs solely because they include personal identifying information or financial information about an entity or an individual.

B. Documents Not Considered to be HSDs.

Most sealed filings are not HSDs. The following document will generally not be considered HSDs:

1. Most sealed filings in civil cases;
2. Presentence reports, pretrial services reports, supervised release violation reports, and probation violation reports;
3. Social security records, administrative immigration records, and qui tam complaints;
4. Commercial or proprietary information.

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.

C. Filing and Service of Highly Sensitive Documents.

1. Any party seeking to file proposed HSD material must, before such filing, seek leave of court for such filing. Any other party may also move the court to designate a filing as HSD if, in its judgment, the filing qualifies as HSD. A request for HSD designation shall be accompanied by a certification of the movant's good-faith belief that the material meets the criteria set forth in section A above. Motions to file proposed HSD material in a civil case are subject to the pleading standards under Fed.R.Civ.P. 11.

2. If represented by counsel, a party shall file a motion for leave to designate a filing as HSD via CM/ECF under existing procedures, **except that a copy of the proposed HSD shall not be filed electronically.** As soon as practicable after the motion is filed electronically, the filing party shall deliver to the Clerk's Office two paper copies of the HSD sought to be filed with a certificate of service. If filing paper copies is impracticable, the

moving party shall contact the presiding district or magistrate judge to make appropriate arrangements to submit the HSD by USB flash drive. These documents shall be submitted to the Clerk's Office in a sealed envelope labeled with the case caption and CM/ECF number and marked "HIGHLY SENSITIVE DOCUMENT."

3. If not represented by counsel, a party shall file by paper two copies of a motion for leave to designate as HSD, together with the proposed HSD and a certificate of service. These documents shall be submitted to the Clerk's Office in a sealed envelope labeled with the case caption and CM/ECF number and marked "HIGHLY SENSITIVE DOCUMENT."

4. The filing party shall serve the HSD on the other parties as follows:

- a. Civil cases – by any manner specified in Federal Rule of Civil Procedure 5(b)(2), except for service via the court's electronic filing system under Rule 5(b)(2)(E);
- b. Criminal cases – by any manner specified in Federal Rule of Criminal Procedure 49(a)(3)(B) or 49(a)(4).

5. The court will issue an order on the motion, and, if granted, an entry will be made on the case docket indicating that the HSD has been filed with the court. The Clerk's Office will serve paper copies of these orders by mail and shall reflect such service in an informational entry.

6. If the court grants the motion, the Clerk's Office will maintain the HSD in a secure paper filing system or, if necessary, a secure standalone computer system that is not connected to any network.

D. Removal of Existing HSDs from the Court's Electronic Filing System.

1. Upon motion of a party or upon its own motion, the court may determine that a document that has been filed electronically is highly sensitive and that good cause exists to direct that the HSD be removed from the court's electronic filing system and be maintained by the Clerk's Office in a secure paper filing system or, if necessary, a secure standalone computer system that is not connected to any network. A request for HSD designation shall be accompanied by a certification of the movant's good-faith belief that the material meets the criteria set forth in section A above. Such requests made in a civil case are subject to the pleading standards under Fed.R.Civ.P. 11.

2. The presiding judge shall determine if the document shall then be treated as HSD. If it is determined that a document be treated as HSD, the Clerk's Office will make an informational docket entry in the court's electronic filing system indicating that the HSD remains in a secure paper filing system or, if necessary, a secure standalone computer system that is not connected to any network.

E. Highly Sensitive Court Orders or Other Documents.

If a court opinion, order, or other document discloses highly sensitive information, the document will be afforded the same protection afforded to highly sensitive documents filed by the parties, including filing in a secure paper filing system or, if necessary, a secure standalone computer system that is not connected to any network. Service of such documents will be done via mail.

F. Questions about HSD Filing Procedures.

Any questions about how filing HSDs should be directed to the Clerk of Court or presiding judge.

It is so **ORDERED**.

Enter this 20th day of January, 2021



Michael F. Urbanski
Chief U.S. District Judge
2021.01.20 08:42:48
-05'00'

Michael F. Urbanski
Chief United States District Judge