

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**PROCEDURES FOR THE FILING, SERVICE, AND MANAGEMENT OF HIGHLY SENSITIVE DOCUMENTS** :  
: **STANDING ORDER**  
:

**WHEREAS**, in response to recent disclosures of widespread breaches of both private sector and government computer systems, federal courts are immediately adding new security procedures to protect highly sensitive documents (“HSD”) filed with the courts;

**THE COURT FINDS** that, pursuant to Federal Rule of Civil Procedure (“Civil Rule”) 5(d)(3)(A), Federal Rule of Criminal Procedure (“Criminal Rule”) 49(b)(3)(A), and Federal Rule of Bankruptcy Procedure (“Bankruptcy Rule”) 9018, good cause exists to require all parties to file certain HSDs outside of the Court’s electronic filing system.

**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 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.

**I. General Statements**

- A. A highly sensitive document is a document that contains highly sensitive information (“HSI”).
- B. HSI generally refers to sensitive or confidential information that is likely to be of interest to the intelligence service of a hostile foreign government or other actor intent on causing damage to this nation, and whose use or disclosure would likely cause significant harm. HSI could also include information contained in

documents whose disclosure could jeopardize the safety of specific individuals.

- C. In connection with business and other entities, documents will likely constitute HSI only (if ever) when they are among the most sensitive records created in the entity's history and that, if wrongfully disclosed, could result in catastrophic financial and/or other loss for the entity.
- D. HSI does not refer to all sensitive or confidential information. Not all sealed documents contain HSI. That a document satisfies the legal criteria for filing under seal is a necessary, but not sufficient, condition for treating a document as an HSD.
- E. It is presumed that documents filed under seal through the Court's current electronic filing system remain secure, and any party moving to file documents under this Standing Order bears the burden to justify such exceptional treatment.
- F. 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.

## **II. Documents That Are Presumptively HSD**

- A. Applications for electronic surveillance under 18 U.S.C. § 2518.
- B. Based on the General Statements above, documents are presumptively deemed to be HSDs if they are substantially likely to adversely affect any of the following:
  - i. the nation's security;
  - ii. the integrity of government operations;
  - iii. the reputational interests of the United States;
  - iv. a foreign sovereign interest;

- v. ongoing law-enforcement investigations and intelligence-gathering operations if either such investigations or operations involve documents that are substantially likely to be used to commit domestic or international crimes;
- vi. the safety of public officials or individuals cooperating with law enforcement in criminal investigations or prosecutions; or
- vii. the ability of an entity to maintain cybersecurity.

### **III. Documents That Are Presumptively NOT HSDs**

- A. Based on the General Statements contained above, all documents other than those listed in Section II above are presumptively deemed to NOT contain HSI and to NOT be HSDs, including the following:
  - i. presentence reports and pretrial-release reports and documents related to these reports;
  - ii. social security records;
  - iii. administrative records in immigration cases; and
  - iv. most sealed filings in civil cases, including the overwhelming majority (if not all) sealed documents filed in intellectual property and Chapter 11 cases.
- B. Any document that is presumptively not an HSD, as well as any other document not expressly addressed in this Standing Order, may be treated as an HSD if it is shown or found to contain HSI.

#### **IV. Filing of Motions to Treat a Document as an HSD**

##### **A. Represented parties**

- i. A represented party shall file a motion to treat a document as an HSD and a proposed order electronically under existing procedures, except that a copy of the proposed HSD shall not be filed electronically. The motion shall explain why the proposed document constitutes an HSD under the criteria set out in Section I above or why it should otherwise be subject to the heightened protection for HSDs, taking account of the presumptions in Sections II and III above.
- ii. The motion referred to in subsection IV.A.i above shall not itself contain or disclose HSI, although it may be filed under seal. If it is not possible to explain why a document to which the motion pertains should be treated as an HSD without disclosing HSI, then the motion should say so, and a supplemental supporting memorandum may be submitted with the HSD – at the same time as and in the same manner as the HSD (see subsection IV.A.iii below).
- iii. As soon as practicable after the motion is filed, the filing party shall deliver to the Clerk’s Office the HSD sought to be filed along with a certificate of service in the form of either two paper copies or an electronic copy on a secure electronic device (as described in Section VIII below). These documents or secure electronic device should be packaged as specified in subsection V.B below.
- iv. The filing party shall serve the proposed HSD on the other parties as

specified in subsections V.C.i or V.C.ii, depending on case type.

- v. The Court will issue an order on the motion and, if granted, an informational entry will be made on the case docket indicating that the HSD has been filed with the Court. The Clerk's Office will maintain the HSD in a secure paper filing system or a secure standalone computer system that is not connected to any network.

B. Pro se parties

- i. 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 a certificate of service in the form of either two paper copies or an electronic copy on a secure electronic device (as described in Section VIII below). These documents or secure electronic device should be packaged as specified in subsection V.B below.
- ii. The filing party shall serve the proposed HSD on the other parties as specified in subsections V.C.i or V.C.ii, depending on case type.
- iii. The Court will issue an order on the motion and, if granted, an informational entry will be made on the case docket indicating that the HSD has been filed with the Court. The Clerk's Office will maintain the HSD in a secure paper filing system or a secure standalone computer system that is not connected to any network.

**V. Filing of Authorized HSDs**

- A. A party filing an HSD pursuant to a Court order (including after grant of a motion as contemplated in Section IV above) or applicable law shall submit to the Clerk's Office the HSD, the certificate of service, and, if applicable, a copy of the Court order authorizing the treatment of that document as highly sensitive in the form of either two paper copies or an electronic copy on a secure electronic device (as described in Section VIII below).
- B. The required documents or secure electronic device 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 confidential information redacted).
- C. The filing party shall serve the HSD on the other parties as follows:
- i. Civil cases - by any manner specified in Civil Rule 5(b)(2), except for service via the Court's electronic filing system, or as otherwise specified by Court order.
  - ii. Criminal cases - by any manner specified in Criminal Rule 49(a)(3)(B) or (a)(4) or as otherwise specified by Court order.
- D. The Clerk's Office will make an informational docket entry in the Court's electronic filing system indicating that the HSD was filed with the Court and that the Court will maintain the HSD in a secure paper filing system or a secure standalone computer system that is not connected to any network.

## **VI. Service of Highly Sensitive Court Orders**

If the Court determines that a Court order contains highly sensitive information, the Clerk's Office will file and maintain the order in a secure paper filing system or a secure standalone computer system that is not connected to any network and will serve paper copies of the order on the parties via mail or may invite the parties to come to the Clerk's Office to pick up a copy of such order.

## **VII. 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 then direct that the HSD or case be removed from the Court's electronic filing system and maintained by the Clerk's Office in a secure paper filing system or a secure standalone computer system that is not connected to any network.
- 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 Section I above or why it should otherwise be subject to the heightened protection for HSDs, taking account of the presumptions in Sections II and III above.

## **VIII. Secure Electronic Device**

For purposes of this Standing Order, all references to a secured electronic device shall mean a BitLocker encrypted flash drive or DVD.

**IX. 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 District Court Clerk's Office at 302-573-6170 or the Bankruptcy Court Clerk's Office at 302-252-2887, as applicable.

**IT IS SO ORDERED**, this 29th day of January, 2021.

Leonard P. Stark  
Chief United States District Judge  
District of Delaware