

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

<b>IN RE AMENDMENT TO PROCEDURES</b>	:	
<b>FOR REQUESTING, FILING, AND</b>	:	
<b>MANAGEMENT OF HIGHLY SENSITIVE</b>	:	<b>STANDING ORDER</b>
<b>DOCUMENTS</b>	:	
	:	

Federal courts are updating their security procedures to uniformly protect highly sensitive documents (HSDs), a narrow subset of sealed documents that must, for their protection, be stored outside the court's electronic system.

**THE COURT FINDS** that good cause exists to permit nonelectronic filing under Civil Rule 5(d)(3)(A) and Criminal Rule 49(b)(3)(A), and to adopt the revised HSD Guidance, Attachment A, which includes a standard definition of HSDs, a dedicated procedure for filing, serving, and maintaining HSDs, and factors to be considered by judicial officers in determining if a document is an HSD.

**THEREFORE, IT IS HEREBY ORDERED** that, effective as of the date of this Order and until such time as the court orders otherwise, HSDs will be filed and served in paper form (or, if digital media, on a secure electronic device), in accordance with this Order and the HSD Guidance, and will be maintained by the clerk's office in a secure paper filing system or secure standalone computer system that is not connected to any network.<sup>1</sup> Sealed documents that are not HSDs will be filed and served in accordance with established procedures. This Order supersedes any and all prior court orders and inconsistent local rules concerning HSDs.

**1. Documents and Materials Subject to this Order**

- a. **Definition:** A **Highly Sensitive Document (HSD)** is a document or other material that contains sensitive, but unclassified, information that warrants exceptional handling and storage procedures to prevent significant consequences that could result if such information were obtained or disclosed in an unauthorized manner. Although frequently related to law enforcement materials, especially sensitive information in a civil case could also qualify for HSD treatment.
  - i. **Examples of HSDs:** Examples include *ex parte* sealed filings relating to national security investigations, cyber investigations, and especially sensitive public corruption investigations; and documents containing a highly exploitable trade secret, financial information, or computer source code belonging to a private entity, the disclosure of which could have significant national or international repercussions.

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<sup>1</sup> This guidance does not apply to classified information, which should be handled according to the Classified Information Procedures Act (CIPA) and the Chief Justice's Security Procedures related thereto, 18 U.S.C app 3 §§ 1, 9. The Chief Justice's Security Procedures (criminal prosecutions) and the Department of Justice (DOJ) regulation 28 C.F.R. § 17.17(c) (civil actions) govern classified information in any form in the custody of a court.

- ii. **Exclusions:** Most materials currently filed under seal do not meet the definition of an HSD and do not merit the heightened protections afforded to HSDs. The form or nature of the document, by itself, does not determine whether HSD treatment is warranted. Instead, the focus is on the severity of the consequences for the parties or the public should the document be accessed without authorization. Most presentence reports, pretrial release reports, pleadings related to cooperation in criminal cases, social security records, administrative immigration records, applications for search warrants, interception of wire, oral, or electronic communications under 18 U.S.C. § 2518, and applications for pen registers, trap and trace devices would not meet the HSD definition.
- b. HSDs vary in their physical form and characteristics. They may be paper, electronic, audiovisual, microform, or other media. The term “document” includes all recorded information, regardless of its physical form or characteristics.

## **2. Requesting HSD Designation**

- a. Any party seeking to file an HSD must, before such filing, seek leave of court by filing a motion for HSD designation, and a certificate of service if the motion is not *ex parte*.
- b. A request for must be accompanied by a certification of the movant’s good-faith belief that the material meets the HSD definition.
- c. The requesting party must articulate why HSD treatment is warranted, including, as appropriate: the contents of the document; the nature of the investigation or litigation; and the potential consequences to the parties, the public, or national interests, in the event the information contained in the document is accessed or disseminated without authorization.
- d. The requesting party must include the proposed HSD, and a proposed order that provides the information state in paragraph 3 below. DO NOT PLACE THE WORD “PROPOSED” ON EITHER OF THESE DOCUMENTS. Instead, attach a separate cover sheet with the caption and words “PROPOSED HSD” and “PROPOSED ORDER” on each of the documents. The court requests this so the clerk’s office can file the HSD if the order grants the motion. Please see Section 4.
- e. The party shall serve the proposed HSD on the other parties by nonelectronic means (paper or secure electronic device) directly upon the party or, when the Civil or Criminal rules permit or the court orders, upon the attorney representing the party.
- f. The motion, the proposed HSD and proposed order, and accompanying material described above, shall be filed in 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, including the case number if one has been assigned (with confidential information redacted). If the motion and proposed HSD are *ex parte*, that should be identified in the caption as well. A party mailing the

documents shall then place the marked envelope described above in an outer envelope for mailing.

### **3. Order Granting HSD Designation**

An order granting a motion for HSD designation, or directing the filing of a document as an HSD on the court's own motion, must:

- a. State the identity of the persons who are to have access to the documents without further order of court; and
- b. Set forth instructions the duration of HSD treatment. HSDs are stored temporarily or permanently offline as the situation requires. When designating a document as an HSD, courts should indicate when the designation will automatically lapse or when the designation should be revisited by the judicial officer. HSDs should be migrated as sealed documents to the court's electronic docketing system and unsealed, as appropriate, as soon as the situation allows.

### **4. Filing an HSD**

- a. A copy of the order granting HSD designation must be included with any document filed as an HSD.
- b. The clerk will maintain the HSD in a secure paper filing system or will store the HSD on an external drive connected to a secure air-gapped standalone computer system that is not connected to any network.
- c. The clerk's office will make a restricted informational docket entry in the court's electronic filing system indicating that the HSD was filed with the court. The docket entry shall not include personal or other identifying details related to or contained with the HSD.
- d. An opinion or order entered by the court related to an HSD may itself constitute an HSD if it reveals sensitive information in the HSD. If the court determines that a court order qualifies as an HSD, the clerk's office will file and maintain the order as an HSD and will serve paper copies of any filings issued by the court via United States Mail.
- e. An HSD in the lower court's record will ordinarily be also regarded by an appellate court as an HSD.

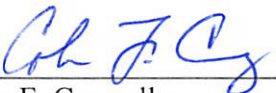
### **5. Safeguarding Internal Communication**

Care should also be taken in internal court communications regarding HSDs, including notes and pre-decisional materials, not to include the protected substance of HSDs in any communication using the internet or a computer connected to a network.

6. **Questions about HSD Filing Procedures**

Any questions about how an HSD should be filed with the court pursuant to this Order should be directed to the clerk's office at 302-573-6170.

**IT IS SO ORDERED**, this Twentieth day of February in 2025.

  
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Colm F. Connolly  
Chief Judge