

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA**

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

**PUBLIC
ADMINISTRATIVE ORDER**

No. 21-AO-0001P

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

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 parties to file certain highly sensitive documents outside of the court's electronic filing system.

THEREFORE, IT IS ORDERED that, effective as of the date of this order, the filing of a highly sensitive document is subject to the procedures and requirements set forth below. This Order supersedes any inconsistent provisions in the court's existing local rules or other administrative orders.

1. Documents Subject to this Order

A highly sensitive document (HSD) is generally defined as a document that contains highly sensitive non-public information that is likely to be of interest to malicious actors, including but not necessarily limited to, the intelligence service of a hostile foreign government, because the use or disclosure of such information could readily be used to create a specific, serious risk:

- i. of death or bodily injury to a specific person or a specific group of persons;
- ii. of harm to national security;
- iii. to the integrity of an ongoing law enforcement

- investigation or other ongoing and confidential governmental operation or investigation;
- iv. of exposing the existence of confidential proceedings under the False Claims Act;
- v. to cybersecurity or major infrastructure security; or
- vi. of giving a competitive advantage in favor of one or more foreign competitors of a United States business enterprise.

In the Northern District of Iowa, very few documents filed under seal in criminal cases and civil cases are HSDs. Counsel in criminal cases and civil cases are strongly encouraged to carefully analyze whether a document is a HSD.

The court anticipates that the following types of sealed documents may constitute HSDs:

- i. Applications for search warrants;
- ii. Applications for mobile tracking devices under 18 U.S.C. § 3117;
- iii. Applications for pen registers or trap and trace devices under 18 U.S.C. § 3127(3) & (4);
- iv. Applications for prospective or “real time” cellular site data under 18 U.S.C. § 3121;
- v. Applications for production of stored electronic communications under 18 U.S.C. § 2703;
- vi. Applications for electronic surveillance under 18 U.S.C. § 2518;
- vii. Applications for anticipatory search warrants based on *United States v. Grubbs*, 547 U.S. 90 (2006); and
- viii. Documents filed in relation to such applications.

The following types of sealed documents will almost never constitute HSDs:

- i. Presentence reports, pretrial release reports, and documents related to such reports;
- ii. Pleadings related to cooperation in most criminal cases;
- iii. Sealed indictments, criminal complaints, arrest warrants or petitions for action on conditions of release;
- iv. Grand jury proceedings;
- v. Social Security records;
- vi. Most sealed filings and protective orders in most cases,

- including settlement agreements;
- vii. Proprietary business information not of obvious interest to a specific foreign government or specific foreign business enterprise;
- viii. Medical, mental health or rehabilitation records;
- ix. Attorney discipline proceedings;
- x. Administrative immigration records;
- xi. Juvenile proceedings;
- xii. Documents containing personal or financial information; or
- xiii. Education records.

Any dispute as to whether a document is a HSD will be resolved by the presiding judge or, when no presiding judge is assigned, the chief judge.

2. Filing a Notice to Treat a Document as a HSD

It is the primary responsibility of a filing party to determine if a document constitutes a HSD. The filing procedures set forth below apply to documents that contain highly sensitive information.

- a. A filing party must file electronically a Notice to Treat a Document as a HSD. Without revealing the highly sensitive information contained within the HSD, the filing party's Notice to Treat a Document as a HSD must refer to the criteria set out in Section 1 above and briefly describe the document that constitutes a HSD.
- b. On the same day that the Notice to Treat a Document as a HSD is filed, the filing party must deliver to the clerk's office two paper copies of the HSD and a certificate of service. These documents must be submitted in a sealed envelope marked "HIGHLY SENSITIVE DOCUMENT" and marked with the applicable case name and case number, applicable docket number, and attorney's name, street address, telephone number, and email address. The HSD must be handed directly to a staff member of the clerk's office. If the HSD cannot be submitted in person to a staff member of the clerk's office, please contact the clerk's office to obtain information on how to submit the HSD. If paper copies of the HSD cannot be submitted, please contact the clerk's office to obtain information on how to submit the HSD.
- c. After the filing party delivers the HSD to the clerk's office, the

docket clerk who receives the HSD will make a docket entry in the case indicating the date and time the filing party filed the HSD.

- d. For documents that must be served on opposing parties, the filing party must serve the HSD on the opposing parties as follows:
 - i. Criminal cases – by any manner specified in Federal Rule of Criminal Procedure 49(a)(3)(B) or (a)(4), except for service via the court’s electronic filing system; or
 - ii. 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.

After serving the opposing party, the filing party must electronically file a certificate of service.

- e. 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.
- f. Upon review of the HSD, the court may direct the parties to take additional steps, including but not necessarily limited to filing briefs and/or filing the HSD in the normal course.

3. Filing and Service of Documents and Court Orders Relating to HSDs

If a party objects to the filing of a document as a HSD, such party should alert the court by filing a Notice of Objection Regarding HSD Filing without revealing the nature of the allegedly highly sensitive information that the filing party submitted. Upon receipt of a Notice of Objection Regarding HSD Filing, the court will establish secure filing procedures to resolve the dispute concerning the filing party’s HSD. 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 it will serve paper copies of the order on the parties via mail.

4. Removal of Existing Documents as 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. If it makes such a determination, the court may 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 a HSD or highly sensitive case from the court's electronic filing system must explain why such document or case is highly sensitive under the criteria set out in Section 1. above or why it should otherwise be subject to the heightened protection for HSDs. To the extent a party is concerned about revealing the nature of the highly sensitive information, the party may request that the court establish secure filing procedures to address the party's concerns.

5. Questions about HSD Filing Procedures

Any questions about how HSDs should be filed with the court pursuant to this Order should be directed to Paul De Young at: 319-286-2321 or Paul_DeYoung@iand.uscourts.gov.

IT IS SO ORDERED.

DATED this 29th day of January, 2021.



LEONARD T. STRAND
CHIEF JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA