

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

**GENERAL ORDER REGARDING PROCEDURES FOR THE FILING, SERVICE AND
MANAGEMENT OF HIGHLY SENSITIVE DOCUMENTS**

WHEREAS, in response to the recent request of the Committee on Court Administration and Case Management of the Judicial Conference of the United States, which asks courts to adopt a new highly sensitive document (HSD) definition and augmented guidance to guard highly sensitive case documents against malicious exposure, this Court finds that, pursuant to Fed. R. Civ. P. 5(d)(3)(A) and Fed. R. Crim. P. 49(b)(3)(A), good cause still exists to require all parties to file certain highly sensitive documents outside of the Court’s electronic filing system and to adopt the use of the following provisions:

THEREFORE, IT IS HEREBY ORDERED that, effective as of the date of this General 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 General Order 21-02 and any inconsistent provision in any existing local rules or other orders of this Court. 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 General Order bears the burden to justify such exceptional treatment. This General Order does not limit or preclude the filing of documents under seal (containing proprietary or confidential information) as currently exists.

1. Documents Subject to this General Order

The filing procedures set forth below shall apply to documents that contain Highly Sensitive Information (“HSI”) and documents containing HSI shall be known as Highly Sensitive Documents (“HSDs”). The following filing procedures apply to HSDs:

- a. HSI does not refer to all sensitive or confidential information. A HSD refers only to 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 way.
- b. The Court anticipates that HSDs may include *ex parte* sealed filings relating to the nation's security investigations; cyber investigations; 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.
- c. 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 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.

2. Filing of A Motion to Treat a Document as an HSD

- a. Any party shall file a motion to treat a document as an HSD and a proposed order electronically under existing procedures in Local Rule CV-5(a)(7)(C), **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 above or why it should otherwise be subject to the heightened protection for HSDs. These documents may be filed only: (i) in person; (ii) by United States Mail; or (iii) by a commercial delivery service (such as Federal Express, DHL or UPS).

- b. HSDs filed under these procedures must be filed with the Clerk of Court in the Division where the case is filed. No separate courtesy copy is needed unless specifically requested.
- c. 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 two paper copies.
- d. The filing party shall serve the proposed HSD on the other parties as specified herein.
- e. 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. This entry will be the only notice of receipt by the Clerk, unless there is a request for a file-stamped copy.
- f. The Clerk's Office will file and maintain HSDs in a secure paper filing system, or on a secure standalone computer system that is not connected to any network, or both, but not otherwise.
- g. Requests by a filing party for a file-stamped copy of any HSD document will not be honored while this General Order is in effect, unless the requesting party delivers in-person to the Clerk a written request signed by the filing party or their counsel requesting the return of a file-marked copy of the HSD and an extra copy to be file-marked. File-marked copies will not be transmitted or made available other than in-person. The filing party must present the requested extra copy to be file-stamped at the time of filing.

3. Service of Highly Sensitive Court Orders

If the court determines that a court order contains HSI, the Clerk's Office will file and maintain the order in a secure paper filing system and/or may determine that the order will be maintained on a secure standalone computer system that is not connected to any network. The Clerk's Office will serve the copies of the order to entitled parties via mail.

4. 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 direct that the HSD or case be removed from the Court's electronic filing system and maintained by the Clerk's Office on 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 above or why it should otherwise be subject to the heightened protection for HSDs.

5. Applications for Electronic Surveillance Under 18 § 2518 Filed Between January 19, 2021, and the Date of This Order

The clerk may coordinate with the United States Attorney's Office to determine which, if any, applications for electronic surveillance under 18 § 2518 that were filed between January 19, 2021, and the date of this order no longer need to be maintained as HSDs.

6. Questions about HSD Filing Procedures

Questions about how an HSD should be filed with the Court pursuant to this General Order should be directed to the Clerk's Office at the appropriate division of the Clerk's Office.

SO ORDERED and SIGNED this 1st day of May, 2024.

FOR THE COURT:



RODNEY GILSTRAP
Chief United States District Judge