

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA**

STANDING ORDER 21-SO-2

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

FILED

JAN 08 2021

PETER A. MOORE, JR., CLERK
US DISTRICT COURT, EDNC
BY *lam* CLK

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

THE COURT FINDS that, pursuant to Fed. R. Civ. P. 5(d)(3)(A) and Fed. R. Crim. P. 49(b)(3)(A), good cause exists to require all parties to file certain highly sensitive documents 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 certain highly sensitive documents is subject to the procedures and requirements set forth below. This Standing Order supersedes any and all inconsistent provisions in existing local rules, other prior standing orders of this court, and any policy or guidance manuals previously issued by the court.

1. Documents Subject to this Order

The filing procedures set forth below apply to documents that contain highly sensitive information.

- a. The following types of documents are deemed highly sensitive documents (HSDs): Applications for search warrants (when accompanied by motions for non-disclosure or delayed disclosure), applications for electronic surveillance under 18 U.S.C. § 2518, applications for an order for a pen register or trap and trace device under 18 U.S.C. § 3122, applications for an order for disclosure of customer communications or records under 18 U.S.C. § 2703, applications for an order directing assistance in the installation and use of a stationary camera, all documents filed in grand jury proceedings or that include information or material classified as Top Secret, Secret, or Confidential in 18 C.F.R. § 3a.11, and all orders and warrants granting, authorizing, or denying the aforementioned documents.
- b. The following types of documents generally are not considered HSDs: Presentence reports, pretrial release reports, documents related to cooperation in

most criminal cases, social security records, administrative immigration records, and sealed filings in many civil cases.

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

2. Filing of Authorized HSDs

- a. A party filing or submitting an HSD pursuant to a court order or applicable law must submit to the clerk's office the HSD, the certificate of service (if applicable), and, if applicable, a copy of the court order authorizing the treatment of that document as highly sensitive in the form of two paper copies. Documents filed or submitted pursuant to this Standing Order do not need to include a copy of this Standing Order.
- b. The required documents, unfolded, must be submitted to the clerk's office in a sealed envelope marked "HIGHLY SENSITIVE DOCUMENT." The outside of the envelope must be affixed with a copy of the HSD's caption page (with confidential information redacted).
- c. When the normal rules would require a party to serve the document on another party, then the filing or submitting party must serve the HSD on the other parties as follows:
 - i. Civil cases - by any manner specified in Fed. R. Civ. P. 5(b)(2), except for service under Fed. R. Civ. P. 5(b)(2)(E); or
 - ii. Criminal cases - by any manner specified in Fed. R. Crim. P. 49(a)(4).
- 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 will maintain the HSD in a secure paper filing system.

3. Filing of Motions to Treat a Document as an HSD

- a. Represented parties
 - i. A represented party who wishes to designate any document not otherwise described in paragraph 1(a) of this Standing Order as a HSD must file a motion to treat a document as an HSD and a proposed order electronically under existing procedures, see Local Civil Rule 5.1 and Local Criminal Rule 49.1, except that a copy of the proposed HSD must not be filed electronically. The motion must explain why the proposed document constitutes an HSD under the criteria set out in paragraph 1.b. above or why it should otherwise be subject to the heightened protection for HSDs. The motion must also set forth, where possible, the opposing party's position on the motion. A separate memorandum is not required.
 - ii. As soon as practicable after the motion is filed, the filing party must deliver to the clerk's office two paper copies of the HSD sought to be filed along with a certificate of service. These documents must be packaged as specified in paragraph 2.b.

- iii. The filing party must serve the proposed HSD on the other parties as specified in paragraph 2.c. Any response by the opposing party must be filed within seven (7) days after service.
 - iv. 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.
- b. Pro se parties
 - i. Pro se parties must 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 two paper copies. These documents must be packaged as specified in paragraph 2.b.
 - ii. The filing party must serve the proposed HSD on the other parties as specified in paragraph 2.c.
 - 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.

4. 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 and will serve paper copies of the order on the parties via mail.

5. 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 in a secure paper filing system.
- b. A party's motion to remove an 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 paragraph 1.b. above or why it should otherwise be subject to the heightened protection for HSDs.
- c. If any HSD is unsealed by the Court, then the order to unseal shall automatically also remove its designation as HSD.

6. Questions about HSD Filing Procedures

Any questions about how an HSD should be filed with the court pursuant to this Standing Order should be directed to the clerk's office at 919-645-1700.

7. Emergency Submissions

Notwithstanding any other rule or practice, in an emergency situation, a party may hand-submit HSDs directly to any judge in the district.

IT IS SO ORDERED, this 8th day of January, 2021.



RICHARD E. MYERS II

Chief United States District Judge