

FEB - 3 2021

Thomas M. Gould, Clerk
U.S. District Court
W.D. OF TN, Jackson

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE

IN RE: Procedures for the Filing,)
Service, and Management of)
Highly Sensitive Documents) Administrative Order No. 2021-05
Relating to Civil or Criminal)
Proceedings)

Administrative Order No. 2021-03 is hereby vacated and replaced.

This Court issues this Administrative Order in response to recent disclosures of widespread breaches of both private sector and government computer systems. As a result of those breaches, federal courts are adding new security procedures to protect from disclosure various highly sensitive documents (“HSDs”) filed in matters before the Court. In particular, and as further described below, the Court finds that, pursuant to Fed.R.Civ.P. 5(d)(3)(A) and Fed.R.Civ.P. 49(b)(3)(A), good cause exists to require all parties to file certain HSDs *outside* of the Court’s electronic filing system (CM/ECF), and to require the Clerk’s Office likewise to docket and maintain those filings outside that system.

To accomplish those objectives, effective as of the date of this Order, and until such time as the Court orders otherwise, the filing of the below-described HSDs shall be subject to the procedures and requirements set forth below. This Administrative Order supersedes any and all inconsistent provisions in existing local rules or other Administrative Orders of this Court with regard to the subject matter set forth herein.

1. Documents Subject to this Order

The filing procedures described herein apply only to documents that are designated as HSDs. Not all documents that contain confidential information are designated as HSDs. To avoid confusion, the Court provides the following guidance for designating HSDs:

- a. The following types of documents filed on or after the date of this order are per se deemed HSDs: applications for interception of a wire, oral or electronic communication under 18 U.S.C. § 2518;.
- b. A document may be deemed an HSD if it involves the following:
 - national security;
 - foreign or domestic sovereign interests;

- cybersecurity;
 - sensitive on-going law enforcement investigations;
 - intelligence or counter-intelligence operations;
 - information that would put at risk the safety of public officials or the integrity of governmental operations; or
 - non-public intellectual property, including trade secrets.
- c. The following types of documents will be deemed HSDs only if specifically requested by the United States Attorney and for good cause shown: search warrant materials; applications for a pen register, trap and trace device, or caller identification option device; criminal complaints; and sealed indictments. A motion to seal, if granted, does not deem such documents HSDs absent a specific request from the United States Attorney to do so in the motion.
- d. The following types of documents generally are not considered HSDs, but may be designated by the Court as HSDs based on the specific circumstances of a given case: (1) presentence reports; (2) pretrial release reports; (3) pleadings related to cooperation in most criminal cases; (4) social security records; (5) administrative immigration records; and (6) sealed filings in civil matters. Parties who believe that a given document in these categories is an HSD should seek designation from the Court as such.
- e. Any dispute as to whether a document is an HSD shall be resolved by the presiding judge or, if no presiding judge is yet assigned, by the Chief Judge.

2. Filing of HSDs

- a. Proposed HSDs are to be provided in advance of filing to the Clerk, or directly to a judicial officer at his or her request, in paper form by hand delivery or regular mail.
- b. A party filing a document that has been designated an HSD, whether because it falls into a per se category of HSDs as set forth above, or because the given document has specifically been designated an HSD by Court Order, shall submit to the Clerk's Office the HSD, the certificate of service, and, if applicable, a copy of

the Court Order designating the document as an HSD. The party shall submit the HSD in the form of two paper copies.

- c. The required documents shall be submitted to the Clerk's Office in a sealed envelope marked "HIGHLY SENSITIVE DOCUMENT." A copy of the HSD's caption page (with confidential information redacted) shall be affixed to the outside of the envelope by the filing party.
- d. The filing party shall 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 via the Court's electronic filing system; or
 - ii. Criminal cases – by any manner specified in Fed.R.Crim.P. 49(a)(3)(B) or (a)(4).
- e. 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 or a secure standalone computer system that is not connected to any network.

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

- a. Represented parties
 - i. A represented party seeking to have a particular document designated as an HSD shall file electronically, pursuant to normal CM/ECF procedures, a motion seeking such designation and a proposed order. The motion shall *not* attach a copy of the proposed HSD. The motion shall explain why the document warrants designation as an HSD. The motion itself will be filed on the public docket, so the filing party should take care to ensure that confidential information from the HSD does not appear in the motion itself.
 - ii. As soon as practicable after the motion is filed, the filing party shall deliver to the Clerk's Office the document as to which such designation is sought, along with a certificate of service, in the form of two paper copies. These documents should be packaged as specified in Paragraph 2.c. The Clerk's Office shall provide the proposed HSD to the judge who is handling the motion referenced in Paragraph 3.a.i.

- iii. The filing party shall serve the proposed HSD on the other parties (if any) as specified in Paragraph 2.d.
 - 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 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 seeking designation of a document as an HSD, a copy of the proposed HSD in the form of two paper copies, and a certificate of service. These documents should be packaged as specified in Paragraph 2.c. The motion shall explain why the document warrants designation as an HSD. The motion itself will be filed on the electronic public docket, so the filing party should take care to ensure that confidential information from the HSD does not appear in the motion itself. The Clerk's Office will provide the proposed HSD to the presiding judge.
 - ii. The filing party shall serve the proposed HSD on the other parties as specified in Paragraph 2.d.
 - 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.

4. Service of Highly Sensitive Court Orders

If the presiding judge in a given matter determines that a particular Court Order contains highly sensitive information, the judge shall designate that Order as an HSD. The Clerk's Office will file and maintain any such 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 and will make a notation on the public docket that a Court Order was filed that date but was designated as an HSD.

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 presiding judge in a matter may determine that a document, case, or any portion of it, that has been filed electronically is highly sensitive and warrants designation as an HSD. Upon such determination, the presiding judge shall direct that all HSDs filed in the matter, or, if the case itself is an HSD, the entire docket of the 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.

6. Questions about HSD Filing Procedures

Any questions about how an HSD should be filed with the Court pursuant to this Administrative Order should be directed to the Clerk's Office at (901) 495-1200 (Memphis matters) or (731) 421-9200 (Jackson matters).

IT IS SO ORDERED this 2nd day of February, 2021.

s/ S. Thomas Anderson
S. THOMAS ANDERSON
CHIEF UNITED STATES DISTRICT JUDGE