

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

FILED
U.S. DISTRICT COURT
AUGUSTA DIV.

2021 JAN 21 A 9:39

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

CLERK J. Hodges
SO. DIST. OF GA.

STANDING ORDER MC 121-002

In response to recent disclosures of widespread breaches of both private sector and government computer systems, the Court finds that, pursuant to Federal Rule of Civil Procedure 5(d)(3)(A), Federal Rule of Criminal Procedure 49(b)(3)(A), and Federal Rule of Bankruptcy Procedure 5005(a)(2), good cause exists to alter its rules to require all parties to file certain highly sensitive documents outside of the Court's electronic filing system (CM/ECF).

IT IS ORDERED THAT:

- (1) Subject to further changes as circumstances may require, the attached procedures are adopted for the filing, service, and management of highly sensitive documents in and by this Court and the United States Bankruptcy Court. This Order supersedes all inconsistent provisions in existing local rules or other general orders of this Court or the United States Bankruptcy Court.
- (2) The Clerk of Court is directed to provide public notice of this Order and to take any necessary and proper actions to implement these procedures.

This 21st day of January, 2021

FOR THE COURT



J. RANDAL HALL
CHIEF JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

Procedures for the Filing, Service
and Management of Highly Sensitive Documents

Established January 21, 2021

1. Documents Subject to this Order

- a. These procedures apply only to documents containing material that, due to its highly sensitive nature, requires a level of security greater than that provided through filing as confidential or under seal in CM/ECF.
- b. While a document must be eligible for filing under seal or as confidential to be considered for classification as highly sensitive material, sealed and confidential filings in most cases in this Court do not warrant highly sensitive designation under this Order.
- c. The following are types of documents that may be deemed highly sensitive documents (HSDs): Documents related to: national security and terrorism investigations, *ex parte* motions and orders for tax information, search warrants and 2703(d) orders, electronic surveillance under 18 U.S.C. § 2518, and cooperation in criminal cases.
- d. The following are types of documents that generally are not considered HSDs: Presentence reports, pretrial release reports, social security records, administrative immigration records, sealed *qui tam* cases, and sealed filings in most civil cases.
- e. The final determination as to whether a document is an HSD will be made by the presiding judge or referred magistrate judge or, when no judge is assigned, the chief judge.

2. Obtaining Authorization to File a Document as an HSD

A party seeking to file a document as an HSD must first obtain an order authorizing the filing of the document as an HSD as follows:

- a. Filing a Motion by Represented Parties
 - i. Except as provided in paragraph 2.f. below, a represented party shall electronically file in CM/ECF a Motion to Deem Filing as an HSD utilizing the motion event “Motion to Deem Filing as an HSD.” This motion will be

restricted on the docket for viewing by case participants only. No documents shall be attached to this electronic filing.

- ii. As soon as practicable after the Motion to Deem Filing as an HSD is filed, the filing party shall deliver to the Clerk's office two paper copies of the Motion to Deem Filing as an HSD, a proposed order, the proposed HSD and a certificate of service demonstrating compliance with paragraph 2.c. The motion shall explain why the proposed document constitutes an HSD. The required documents, unfolded, shall be submitted to 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 (with confidential information redacted) and with a copy of the notice of electronic filing generated from CM/ECF upon the filing of the motion to treat the document as an HSD.
- iii. Any responses or replies by parties shall be filed electronically in CM / ECF utilizing the response event "Response to Motion to Deem Filing as an HSD." This Response will be restricted on the docket for viewing by case participants only. No documents shall be attached to this electronic filing.
- iv. As soon as practicable after the Response to the Motion is filed, the filing party shall deliver to the Clerk's office two paper copies of the Response to the Motion to Deem Filing as an HSD, a proposed order, and a certificate of service demonstrating compliance with paragraph 2.c. The required documents, unfolded, shall be submitted to 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 (with confidential information redacted) and with a copy of the notice of electronic filing generated from CM/ECF upon the filing of the response to the motion to treat the document as an HSD.

b. *Pro se* parties

Pro se parties shall submit to the Clerk's office for filing two paper copies of: a motion to treat a document as an HSD that explains why the document constitutes an HSD, the proposed HSD, and a certificate of service demonstrating compliance with paragraph 2.c. The required documents, unfolded, shall be submitted to 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 (with confidential information redacted).

c. Service By All Parties

The filing party must serve the proposed HSD and any other documents submitted to the Clerk's office in paper on the other parties as follows:

- i. Civil cases - by any manner specified in Fed. R. Civ. P. 5(b)(2), excluding service via the Court's CM/ECF electronic filing system;
- ii. Criminal cases - by any manner specified in Fed. R. Crim. P. 49(a)(3)(B) or (a)(4); or
- iii. Bankruptcy cases-by any manner specified in Fed. R. Bankr. P. 7004, excluding service via the Court's CM/ECF electronic filing system.

d. Issuance of Court Order

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. If the motion is denied, the proposed HSD will be deemed withdrawn and may be retrieved from the Clerk's office by the filing party or counsel within ten calendar days. After ten calendar days, the proposed HSD may be destroyed by the Clerk's office without further notice.

e. Entire Case Deemed HSD

In rare cases in which most filings are expected to be HSDs, a judge, *sua sponte* or upon motion, may deem an entire case highly sensitive. Once a case is deemed highly sensitive, further motions to treat a document filed within that case as an HSD are unnecessary. All documents filed within a case deemed highly sensitive must be filed in paper format in the manner required by paragraph 2.c above.

f. Exceptions to the Requirement that a Represented Party File Electronically in CM/ECF a Motion to Treat a Document as an HSD

Exceptions to the requirement that a represented party file electronically in CM/ECF a motion seeking to treat a document as an HSD are the following: (1) Motions to be filed in sealed criminal and civil cases must be filed in paper with the Clerk's office; (2) Applications for electronic surveillance under 18 U.S.C. § 2518, search warrants and 2703(d) orders and other appropriate magistrate judge matters, together with the motion, proposed order and proposed HSD, must be presented in paper to the appropriate district judge or magistrate judge in chambers; (3) Motions to file a civil complaint as an HSD must be filed with the Clerk's office in paper along with the complaint; and (4) Oral

motions made in open court regarding a cooperating defendant in a criminal case must be accompanied by a proposed order.

3. 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 United States Mail, overnight courier or court-approved encrypted email.

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 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 shall explain why such document or case is highly sensitive under the criteria set out in paragraph 1 above or why it should otherwise be subject to the heightened protection for HSDs.

5. Bankruptcy Court Filings

- a. For documents filed in the United States Bankruptcy Court under these procedures, all references to "Court" shall mean, when appropriate, the United States Bankruptcy Court for the Southern District of Georgia and to "Clerk" shall mean, when appropriate, the Clerk of the United States Bankruptcy Court.