

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE: PROCEDURES TO ASK THE COURT TO
REMOVE SEALED DOCUMENTS WITH
HIGHLY SENSITIVE INFORMATION (HSI)
FROM CM/ECF

GENERAL ORDER
No. 2

WHEREAS in response to the recent disclosure of widespread breaches of both private-sector and government computer systems as part of what is suspected to be an intelligence-gathering operation by a hostile foreign government, federal courts are immediately adding new security procedures to protect sealed documents with highly sensitive information (“HSI”);

WHEREAS the Court issued General Order No. 1, In Re: Procedures for the Filing, Service, and Management of Sealed Documents with Highly Sensitive Information on January 8, 2021, finding that under Civil Rule 5(d)(3)(A) and Criminal Rule 49(b)(3)(A), good cause exists to require all parties to file sealed documents with HSI outside of the Court’s electronic filing system, and outlining the sealed documents that may contain HSI, how to file sealed documents with HSI, Court review of documents filed as sealed documents with HSI, and service of highly sensitive court orders;

WHEREAS the Court acknowledges that documents currently filed under seal in CM/ECF may contain HSI, that the Court continues to follow the guidance of the Administrative Office of the United States Courts concerning sealed documents with HSI filed in CM/ECF, and that as more information is learned about the breach, the Court may take additional steps to help protect sealed documents with HSI that are filed in CM/ECF.

THEREFORE, IT IS HEREBY ORDERED that, effective as of the date of this order and until such time as the Court orders otherwise, parties may use the following procedures to file a motion that identifies documents currently filed under seal in CM/ECF that may contain HSI and request that those documents be removed from CM/ECF.

FILED 1/28/21
KATE M. FOGARTY
JUDGMENT ENTD
DEPUTY CLERK D. Bell

1. Documents Subject to this Order

- a. HSI refers only to sensitive or confidential information that is likely to be of interest to the intelligence service of a hostile foreign government and whose use or disclosure by a hostile foreign government would likely cause significant harm.
 - i. Therefore, not all sensitive or confidential information is HSI. On the contrary, very few documents filed under seal in federal court contain HSI.
 - ii. The fact that a document was filed under seal does not mean the document contains HSI. The Court expects that most sealed documents do not contain HSI.
 - iii. Even if documents contain trade secrets, the information does not necessarily rise to the level of HSI unless (1) the trade secrets are likely to be of interest to the intelligence service of a hostile foreign government and (2) use or disclosure of the trade secrets by a hostile foreign government would likely cause significant harm.

- b. The Court anticipates that sealed documents filed in cases involving the following may often contain HSI:
 - i. national security;
 - ii. foreign sovereign interests;
 - iii. cybersecurity;
 - iv. ongoing law-enforcement investigations or intelligence-gathering operations;
 - v. the extent of domestic or international interests;
 - vi. information that would put at risk the safety of public officials or the integrity of governmental operations;
 - vii. non-public intellectual property, such as trade secrets, depending on the nature of the technology involved; or
 - viii. the reputational interests of the United States.

- c. The Court also anticipates that the following types of sealed documents may often contain HSI:
 - i. Applications for search warrants; and
 - ii. Applications for electronic surveillance under 18 U.S.C. § 2518.

- d. The Court anticipates that the following types of sealed documents are unlikely to contain HSI:
 - i. Presentence reports and pretrial-release reports and documents related to such reports;
 - ii. Pleadings related to cooperation in most criminal cases;
 - iii. Social Security records;
 - iv. Administrative records in immigration cases; and
 - v. Most sealed filings in most civil cases.

- e. Any dispute as to whether a document contains HSI must be resolved by the presiding district or magistrate judge or, when no presiding judge is assigned, the chief judge.

2. Motion to Remove Sealed Documents with HSI from CM/ECF

- a. Any party in any case, open or closed, may file a motion in ECF to remove sealed documents with HSI from CM/ECF.
 - i. The motion must be filed with a supporting statement that (1) clearly identifies by docket number each sealed document that the moving party believes may contain HSI, and (2) briefly explains the basis for the moving party's contention that the identified documents may contain HSI.
 - ii. The motion and supporting statement may be filed under seal in CM/ECF.
 - iii. If it is not possible to explain why the identified documents may contain HSI without revealing the HSI itself, the moving party may file the supporting statement as a sealed document with HSI by following the filing procedures in paragraph 3, below.

3. Filing Sealed Documents with HSI

- a. If the filing party determines that a document contains HSI, the filing party must not file the document in the Court's electronic filing system but must instead:

- i. Complete the “Sealed Document with HSI Placeholder Form,” which can be found on the Court’s website.
 - ii. File the Placeholder Form in ECF in place of the sealed document with HSI using the applicable ECF event, including adding any applicable parties when filing.
 - iii. Print the filed Placeholder Form from ECF as well as a copy of the Notice of Electronic Filing (“NEF”) for the Placeholder Form and the sealed document with HSI.
 - iv. Place the following in a sealed envelope marked “HIGHLY SENSITIVE DOCUMENT” and addressed to the Clerk’s Office:
 - A. A copy of the NEF;
 - B. A copy of the file Placeholder Form; and
 - C. The document with HSI.
 - v. Place two courtesy copies of these documents in a sealed envelope marked “HIGHLY SENSITIVE DOCUMENT” and addressed to the presiding district judge or magistrate judge (or, if no judge has been assigned to the case, to the Chief Judge).
 - vi. Contemporaneously with filing of the Placeholder Form in ECF, deliver or place in the mail the envelopes to the Clerk’s Office.
- b. The filing party must serve the sealed document with HSI on the other parties as follows:
- i. Civil cases - by any manner specified in Civil Rule 5(b)(2), except for service via the Court’s electronic filing system; or
 - ii. Criminal cases - by any manner specified in Criminal Rule 49(a)(3)(B) or (a)(4).
- c. The Clerk’s Office will maintain the sealed document with HSI in a secure paper filing system or a secure standalone computer system that is not connected to any network.

4. Orders on Motions to Remove Sealed Documents with HSI from CM/ECF

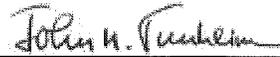
- a. The Court will issue an order granting or denying the motion to remove sealed documents with HSI from CM/ECF.

- b. If the Court grants the motion in full or in part, the Clerk's Office will remove the affected sealed document from the case docket and add an informational entry on the case docket indicating that the document was refiled as a sealed document with HSI. The Clerk's Office will maintain the sealed document with HSI in a secure paper filing system or a secure standalone computer system that is not connected to any network.

This order takes effect immediately and will be in effect until further order of the Court.

DATED: January 28, 2021

TIME: 4:00 PM
at Minneapolis, Minnesota



JOHN R. TUNHEIM
Chief Judge
United States District Court