

**United States District Court
District of Maine**

IN RE:)
)
PROCEDURES FOR THE)
FILING, SERVICE, AND) GENERAL ORDER 2021-5
MANAGEMENT OF HIGHLY)
SENSITIVE DOCUMENTS)

GENERAL ORDER

In January 2021, in response to recent disclosures of widespread breaches of both private sector and government computer systems, the Judicial Conference of the United States requested that each Judicial District consider adopting orders and procedures to initiate heightened security protocols to protect “highly sensitive documents” (HSDs) filed with the nation’s Federal Courts. On January 15, 2021, the Court adopted interim procedures addressing the handling, filing, service, and management of HSDs. *See* General Order 2021-1 (Jan. 15, 2021).

Based on guidance, observations and recommendations that the Court has received from the Federal Judiciary and others since that time, the Court finds that the designation of a document as an HSD is a fact-specific determination.

In general, and as described more fully below, an HSD is one that contains information that may be sought by malicious state actors and which, if revealed, would create a high risk of imminent threat to an identifiable individual, would cause harm to the interests of the United States, or would expose trade secrets of a serious nature.

Based on the request of the Judicial Conference and pursuant to Fed. R. Civ. P. 5(d)(3)(A) and Fed. R. Crim. P. 49(b)(3)(A), good cause exists to require the filing of certain highly sensitive documents outside of CM/ECF, 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 handling, filing, service, and management of documents that qualify as HSDs shall be subject to the procedures and requirements set forth below.

1. Handling of Highly Sensitive Documents

Documents that the Court designates as an HSD after the date of this order shall not be stored in CM/ECF, the Court’s electronic filing system, but instead will be maintained in a secure paper filing system.

2. Designating HSDs; Motion Required

To determine if a document is an HSD, a judge must consider factual information about the document such as whether the information in the document “involves matters of national security, foreign sovereign interests, cybersecurity; the extent of domestic or international interests; the involvement of public officials; or intellectual property or trade secrets.” Administrative Office of the United States Courts, *Highly Sensitive Document Procedures: Background FAQs* (last updated April 8, 2021), <http://jnet.ao.dcn/court-services/highly-sensitive-document-procedures/background-faqs>. Therefore, all requests to designate a document as an HSD must be made by motion of a party or upon the Court’s own motion.

Motions to treat a document as an HSD must explain why the proposed document constitutes an HSD and should be subject to the heightened protections for HSDs.

3. Handling of Motions and Proposed HSDs by Clerk

Any motion by a party to designate a document as an HSD that is currently docketed in CM/ECF shall be filed in paper and be provided to the Clerk by hand delivery or mail. A motion to designate a proposed document as an HSD, along with the proposed document, will be provided to the Clerk in paper copy by hand-delivery or mail.

The filing party will serve the Proposed HSD on the other parties as required by federal or local rule.

Documents that the Court determines to be an HSD will be maintained in a secure paper filing system in keeping with this order. If a document designated as an HSD has previously been uploaded to CM/ECF, it will be removed from CM/ECF.

The Clerk’s Office will handle motions and proposed HSD documents in paper until a judicial determination is made about a document’s HSD status.

Any Court order determining that a document is an HSD will be filed and maintained in a secure paper filing system and the Clerk’s Office will serve paper copies of the order on the parties via mail.

If a motion to designate a document as an HSD is denied, both the document and the motion will be docketed and uploaded to CM/ECF.

4. Termination of HSD Designation

When an HSD designation expires or is terminated by order of the Court, the document formerly designated as an HSD will be docketed and uploaded to CM/ECF. All other documents that are HSDs shall be stored in paper and not entered in CM/ECF until the presiding Judge or, in the absence of the presiding Judge, the Chief Judge has ordered that the document shall no longer be treated as an HSD.

5. Effectiveness

This General Order supersedes General Order 2021-1. This General Order shall take effect immediately and shall remain in effect until superseded by another General Order or terminated by Order of the Chief Judge.

SO ORDERED.

Dated: May 10, 2021

/s/ Jon D. Levy
CHIEF U.S. DISTRICT JUDGE