

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

In the matter of

PROCEDURES FOR THE FILING,
SERVICE, AND MANAGEMENT OF
HIGHLY SENSITIVE DOCUMENTS

**MISCELLANEOUS
GENERAL ORDER
21-02**

In response to the recent discovery of wide-spread security breaches of both private sector and government computer systems, federal courts are immediately adding new security procedures to protect highly sensitive documents (HSDs) filed with the courts.

The Court has determined 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 HSDs outside of the judiciary's Case Management/Electronic Case Filing (CM/ECF) system.

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 HSDs shall be subject to the procedures and requirements set forth below. This Miscellaneous General Order supersedes any and all inconsistent provisions in existing local rules or other general orders of this court.

1. Definition of HSDs:

The Court anticipates that relatively few documents filed in this Court will be classified as HSDs. An HSD is a document that contains sensitive or confidential information that may be of interest to the intelligence service of a hostile foreign government and the use or disclosure of such a document by a hostile foreign government would likely cause significant harm. A document that meets these criteria may be filed under seal as an HSD.

Documents containing the following information are deemed highly sensitive documents (HSDs):

- a. Matters of potential value to malicious nation-state actors;
- b. Matters of national security;
- c. Foreign sovereign interests;
- d. Cyber threats to include cybercrime, cyber-attack, and cyberterrorism;
- e. Information that would put at risk the safety of public officials or the integrity of governmental operations; or
- f. Non-public intellectual property, including trade secrets.

This list is not exhaustive and other types of documents may be deemed HSDs upon application by the U.S. Attorney or defense counsel and approval by the Court.

The following types of documents are unlikely to be classified HSDs:

- g. Presentence reports and pretrial-release reports and documents related to such reports;
- h. Social Security records;
- i. Administrative records in immigration cases; and
- j. Most sealed filings in civil cases.

2. HSD Procedure for Warrant Applications in Miscellaneous Cases

When the U.S. Attorney's Office or agent presents an application for a search warrant, application for electronic surveillance under 18 U.S.C. §2518, or other warrant application and requests that it be designated as an HSD, the Assistant U.S. Attorney assigned to the matter will present to the assigned magistrate judge in paper: the warrant application; the Motion to Designate Highly Sensitive Document (HSD) and a Proposed Order to Designate HSD. The motion shall explain why each proposed document should be afforded treatment as an HSD under the criteria set forth in Section 1.

The assigned magistrate judge will determine whether the documents qualify as HSDs. If the magistrate judge grants the motion, an order will be filed in the miscellaneous case outside of CM/ECF. The Clerk's Office will store the filed documents in a secure paper filing system or in a secure stand-alone computer.

If the assigned magistrate judge denies the motion, Clerk's Office staff will file the motion, warrant application, and order denying the motion in the miscellaneous case in CM/ECF, and the case will remain sealed unless otherwise ordered.

3. Filing of Authorized HSDs:

- a. In order to have a document filed as an HSD, a party must submit to the Clerk's Office for filing in paper a Motion to treat a document as an HSD, the HSD sought to be filed, and a certificate of service.
- b. The filing party shall hand deliver or deliver by mail the motion, a proposed order and an original HSD and two judge's copies to the Clerk's Office in the appropriate division inside a sealed envelope that does not provide any indication of the envelope's contents. The HSD and judge's copies should be contained inside an inner sealed envelope that is clearly marked "Highly Sensitive Document."

- c. The required certificate of service must not be made through CM/ECF, but may be achieved in any other manner permitted under Fed. R. Civ. P. 5(b)(2) or Fed. R. Crim. P. 49(a)(3)(B) or (a)(4).
- 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. Rule 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 but will not otherwise indicate the nature of the document or its reason for classification as an HSD.
- f. The Clerk's Office will maintain the HSD in a secure paper filing system or a secure stand-alone computer system that is not connected to any network.
- g. The Clerk's Office is authorized to issue other procedural instructions to facilitate the filing and storage of HSDs.

4. Court Review

- a. The Court will issue an order on the motion and if granted, 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 stand-alone computer system not connected to any network outside the court's electronic filing system. Service of the HSD on parties will be via mail.
- b. If the judge assigned to the case determines that the document does not meet the definition of an HSD under this Order, the party will be directed to refile in CM/ECF any document that the party filed in paper as an HSD.

5. HSDs Previously Filed in CM/ECF

- a. A party may request removal from CM/ECF of a previously-filed document that meets the definition of an HSD by filing a sealed motion non-electronically in the underlying case that identifies the docket number of the HSD, along with a certification of the movant's good faith belief that the document meets the definition of an HSD or why it should otherwise be subject to the heightened protection of HSDs. Additionally, the presiding judge may, on the judge's own motion, direct the Clerk's Office to remove any previously filed HSD from

CM/ECF and to maintain the document in a secure paper filing system or a secure stand-alone computer system that is not connected to any network.

- b. An informational entry will be made on the case docket indicating that the motion has been filed and will be maintained in a secure offline format.
- c. This Order does not change any procedures for filing sealed documents that do not meet the definition of an HSD under L. Civ. R. 7.3(f) and L. Crim. R. 47.1(f).

6. Questions about HSD Filing Procedures

Any questions about how an HSD should be filed with the court pursuant to this Miscellaneous General Order should be directed to the Clerk's Office at **(907) 677-6103**.

DATED this 1st day of February, 2021.

/s/ Timothy M. Burgess

Hon. Timothy M. Burgess

Chief United States District Judge

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