

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

IN RE: HIGHLY SENSITIVE DOCUMENTS

Standing Order 2021-2

WHEREAS, in response to recent disclosures of widespread breaches of 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 FINDS that, pursuant to Fed. R. Civ. P. 5(d)(3)(A) and Fed. R. Crim. P. 49(b)(3)(A), good cause exists to permit the filing of HSDs outside of 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 filing of HSDs shall be subject to the procedures and requirements set forth below. In all cases, the filing party bears the burden to identify any proposed HSD and file a Motion to Designate HSDs pursuant to the procedures set forth in Sections II and III. This Standing Order supersedes any and all inconsistent provisions in existing local rules or other standing orders of this Court.

I. Documents Subject to this Order

The following types of documents may qualify as HSDs:

- A. Documents involving unclassified matters of national security.
- B. Documents involving foreign sovereign interests that, if disclosed, would create a risk to national security.
- C. Documents related to criminal activities involving cybersecurity, intellectual property, or trade secrets; international terrorism; federal public officials; or the reputational interests of the United States; and that, if disclosed, would create a risk to national security.
- D. Documents whose sensitivity rises to the level of the types of documents listed in Section I.A through I.C above and are designated as "highly sensitive" by the presiding judge or by the duty judge when no presiding judge is assigned.

The following types of documents generally are not considered HSDs: presentence reports; pretrial release reports; filings and documents related to pleas and sentencing and petitions for compassionate release and/or other sentencing relief; social security case documents; immigration documents; and sealed filings in most civil cases.

II. 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 duty judge in paper: the warrant application; the Motion to Designate Highly Sensitive Documents; and a Proposed Order to Designate Highly Sensitive Documents. The motion shall explain why each proposed document should be afforded treatment as an HSD under the criteria set forth in Section I.

The duty judge will determine whether the documents qualify as HSDs. If the duty 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 stand-alone computer.

If the duty 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.

III. HSD Procedure in All Other Cases

The filing party shall deliver to the Clerk's Office in paper two sets of the following documents: the Motion to Designate Highly Sensitive Documents; the proposed HSDs; a Proposed Order to Designate Highly Sensitive Documents; and, unless the documents are submitted *ex parte*, a certificate of service for the motion. The motion shall explain why each proposed document should be afforded treatment as an HSD under the criteria set forth in Section I. Each set is to be submitted in a separate sealed envelope, each marked "HIGHLY SENSITIVE DOCUMENT." The outside of each envelope shall be affixed with a copy of the motion's first page (with confidential information redacted) and the CM/ECF case number, unless the documents subject to the motion are case initiating documents for which a case number has not been assigned.

Unless the Motion to Designate Highly Sensitive Documents, proposed HSDs, and proposed order are submitted *ex parte*, the filing party shall serve the motion, proposed HSDs, and proposed order on the other parties as follows:

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

Criminal cases - by any manner specified in Fed. R. Crim. P. 49(a)(3)(B) or (a)(4).

Clerk's Office staff will docket a Notice of Receipt of an HSD Motion in CM/ECF in an entry restricted to court staff. The Clerk's Office will store the filed documents in a secure paper filing system or in a stand-alone computer.


Any dispute as to whether a document is an HSD shall be resolved by the presiding judge or, when no presiding judge is assigned, by the duty judge. The assigned judge retains the discretion to set a briefing schedule on the matter. The Court will issue an order deciding the Motion to Designate Highly Sensitive Documents.

If the Court grants the Motion to Designate Highly Sensitive Documents, Clerk's Office staff will docket the order in CM/ECF if the order does not contain highly sensitive information. If the Court determines that a court order contains highly sensitive information, the Clerk's Office will store the order in a secure paper filing system or in a stand-alone computer, and will serve paper copies of the order on the parties via mail.

If the Court denies the Motion to Designate Highly Sensitive Documents, Clerk's Office staff will docket the motion, order, and any related documents under seal in CM/ECF unless otherwise ordered. To file the document that had been subject to the motion, the filer may employ standard filing procedures for documents that are considered sensitive or confidential but do not meet the definition of an HSD.

This Order does not change any filing procedures for documents that are considered sensitive or confidential and filed under seal but do not meet the definition of HSDs.

IT IS SO ORDERED. DATED this 19 day of Jan, 2021.


MARCO A. HERNÁNDEZ
Chief U.S. District Judge