

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



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

AMENDED GENERAL ORDER

WHEREAS, in response to recent disclosures of wide-spread breaches of both private sector and government computer systems, federal courts are immediately adding new security procedures to protect highly sensitive documents filed with the courts;

WHEREAS, 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 require all parties to file certain highly sensitive documents outside of the court's electronic filing system;

WHEREAS, on January 11, 2021, the Court issued a General Order, which outlined new procedures to protect highly sensitive documents filed with the courts.

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 certain highly sensitive documents shall be subject to the procedures and requirements set forth below. This General Order supersedes the General Order dated January 11, 2021, any and all inconsistent provisions in existing local rules or other general orders of this court.

1. Documents Subject to this Order

- a. **Authorized HSDs:** The following types of documents are deemed highly sensitive documents (HSDs):
 - i. Applications for electronic surveillance under 18 U.S.C. § 2518, including pen registers and trap and trace devices; and
 - ii. partial reports of grand jury proceedings and documents indicating the number of grand jurors concurring.
- b. **Documents That May be Considered HSDs:** The following documents may be considered HSDs if, upon a motion to the presiding judge, or the chief judge if the case has not yet been assigned, or upon the court's own motion, the judge finds that they contain highly sensitive information:
 - i. Documents that contain information which, if disclosed would present a clear and present danger to life and safety or disclosure of such will result in grave or extreme harm;

- ii. documents in highly sensitive criminal matters, such as applications for search warrants, applications and orders for non-disclosure, and disclosure notices;
 - iii. documents discussing matters of national security, foreign sovereign interests, or cybersecurity;
 - iv. documents raising highly sensitive domestic or international issues or the involvement of public officials;
 - v. documents involving intellectual property, trade secrets, or other highly sensitive commercial issues; or
 - vi. documents discussing the reputational interests of the United States.
- c. **Documents That Are Generally Not HSDs:** The following types of documents generally are not considered HSDs: Presentence reports, pretrial release reports, pleadings related to cooperation in most criminal cases, social security records, administrative immigration records, and sealed filings in many civil cases.
- d. Any dispute as to whether a document is an HSD shall be resolved by the presiding judge or, when no presiding judge is assigned, the chief judge.

2. Filing of Authorized HSDs

- a. A party filing an Authorized HSD pursuant to this Order shall submit to the clerk's office one original plus any additional copies to be conformed by the clerk's office.
- b. The required documents shall be submitted to the clerk's office unfolded and in a sealed envelope marked "HIGHLY SENSITIVE DOCUMENT." The outside of the envelope shall include the case number, if applicable, and the presiding judge or, if one is not assigned, the duty judge.
- c. The clerk's office will make an informational docket entry in the court's electronic filing system indicating that the Authorized HSD was filed with the court and will maintain the HSD in a secure paper filing system.

3. Filing of Motions to Treat a Document as an HSD

- a. Represented parties
 - i. Unless deemed an Authorized HSD pursuant to paragraph 1.a. of this Order, a represented party shall file a notice of motion to treat a document as an HSD on the court's electronic filing system. Please note: a copy of the proposed HSD shall not be filed electronically.
 - ii. The filing party shall serve the proposed HSD on the other parties as follows:
 - 1. Civil cases - by any manner specified in [Fed. R. Civ. P. 5\(b\)\(2\)](#) except for service via any electronic means under Civil Rule 5(b)(2)(E); or
 - 2. Criminal cases - by any manner specified in [Fed. R. Crim. P. 49\(a\)\(4\)](#).
 - iii. The party seeking to file a document as an HSD shall deliver two paper copies of the following documents, packaged as specified in paragraph 2.b.,

directly to the chambers of the assigned judge, or the chief judge if no judge is assigned, without electronically filing the same:

- a. original document to be sealed;
 - b. a supporting affidavit or, if appropriate, a memorandum of law, setting forth the reasons as to why the document should be treated as an HSD as described in paragraph 1.b. or why it should otherwise be subject to the heightened protection for HSDs; and
 - c. a proposed order granting the motion to file the document as an HSD;
 - d. a certificate of service.
- iv. 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.
- b. Pro se parties
- i. Pro se parties shall submit to the clerk's office for filing a motion to treat a document as an HSD, the HSD sought to be filed, and a certificate of service. These documents should be packaged as specified in paragraph 2.b.
 - ii. The filing party shall serve the proposed HSD on the other parties as specified in paragraph 3.a.ii.
 - iii. 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.

4. Service of Highly Sensitive Court Orders

If the court grants an application to treat a document as an HSD, the clerk's office shall serve paper copies of the order on the parties via mail.

5. Retention of HSDs

The Court shall maintain all HSDs in a secure paper filing system in accordance with the [judiciary policy for records disposition](#). If the court denies an application for a document to be treated as an HSD, the document will be returned to the filer.

6. Removal of Existing HSDs or Highly Sensitive Cases from the Court's Electronic Filing System

- a. Upon motion of a party to the presiding judge or upon the court's 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

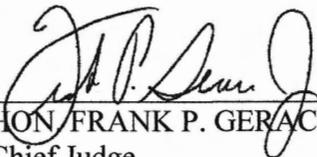
as described in paragraph 1.b. above or why it should otherwise be subject to the heightened protection for HSDs.

7. Termination of HSD Designation

- a. If a search warrant is designated as an HSD pursuant to paragraph 1.b., the designation shall expire when a search warrant has been executed and returned to the court, unless the Government moves for, and the court grants, an extension of the HSD classification. Search warrants that are no longer deemed highly sensitive will be docketed and uploaded to the court's electronic filing system.
- b. All other documents that are HSDs shall retain HSD designation until, upon a motion to the presiding judge or chief judge if no judge is assigned, the judge orders that the document no longer be treated as an HSD.

IT IS SO ORDERED.

Dated: January 20, 2021
Rochester, New York



HON FRANK P. GERACI, JR.
Chief Judge
United States District Court