

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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

GENERAL ORDER NO. 2021-01

In accordance with the Memorandum from the Director of the Administrative Office of the United States Courts to all United States Judges (January 6, 2021) (on file with the Administrative Office of the United States Courts) regarding policy changes for sealed filings in CM/ECF in response to cybersecurity breaches into the computer systems of federal agencies:

IT IS ORDERED:

1. There is good cause, pursuant to [Fed. R. Civ. P. 5\(d\)\(3\)\(A\)](#) and [Fed. R. Crim. P. 49\(b\)\(3\)\(A\)](#), to permit all parties to file certain highly sensitive documents outside of the Court's electronic filing system.
2. The following provisions apply, effective immediately, to all highly sensitive documents filed after the promulgation of this General Order. They do not affect procedures for all documents containing confidential information routinely filed under seal or restricted access pursuant to [NECivR 5.3](#), [NECivR 7.5](#), [NECrimR 12.5](#), and [NECrimR 49.1.1](#).
3. "Highly sensitive documents" for purposes of this General Order are documents that include sensitive or confidential information likely to be of interest to the intelligence service of a hostile foreign government and the use or disclosure of which could cause significant harm. For instance, "highly sensitive documents" might be filed in cases involving:

- National security;
 - Foreign or domestic sovereign interests;
 - Cybersecurity;
 - Ongoing law enforcement investigations, including search warrant applications and applications for electronic surveillance pursuant to [18 U.S.C. § 2518](#);
 - Intelligence or counter-intelligence operations;
 - Information that, if disclosed, might endanger public officials or the integrity of government operations; or
 - Non-public intellectual property, including valuable trade secrets.
4. "Highly sensitive documents" will not generally include (unless the case falls within one of the categories exemplified in the previous paragraph):
- Presentence and pretrial reports;
 - Pleadings indicative of cooperation in criminal cases;
 - Sealed indictments, criminal complaints, arrest warrants, or petitions for action on conditions of release;
 - Grand jury proceedings;
 - Social Security records;
 - Medical, mental health, or rehabilitation records;
 - Administrative records in immigration cases;
 - Attorney discipline proceedings;
 - Juvenile proceedings;
 - Documents containing personal or financial information;
 - Education records;
 - Proprietary business information not of interest to a foreign government; or
 - Documents subject to a routine protective order in a civil case.

5. It is the primary responsibility of a filing party to determine if a document to be filed is highly sensitive. If the filing party determines that a document is highly sensitive, the filing party shall electronically file a "Motion for Leave to File a Highly Sensitive Document," and promptly provide to the Clerk's Office in hard copy:
 - a. A printed copy of the filed Motion for Leave,
 - b. A supporting statement explaining the basis for the filing party's conclusion that the filing is highly sensitive,
 - c. A draft order for the assigned judge's signature granting the Motion for Leave, and
 - d. The highly sensitive document or documents.¹

If the Motion for Leave cannot be electronically filed, the filing party may present its hard copy of the Motion for Leave to the Clerk's Office for initial filing along with its supporting documentation.

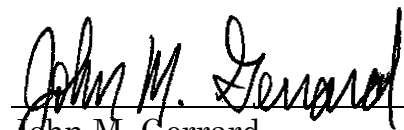
6. The filing party shall, for documents that must be served on opposing parties, effect service using one of the non-electronic methods of service provided by [Fed. R. Civ. P. 5](#) or [Fed. R. Crim. P. 49](#), and electronically file a certificate of service.
7. The Clerk's Office shall file-stamp the hard-copy submission and, unless otherwise directed by the Court, keep the highly sensitive document or documents in its secure custody and control, subject to the same procedures exercised for storing exhibits in the Court's vault.

¹ In the extremely unusual case in which highly sensitive documents may be too voluminous to readily provide in hard copy, or if the filing cannot be reduced to hard copy, the filing party may contact an assigned judge's chambers to discuss how the documents may be submitted.

8. Upon receipt of the hard-copy submission, the assigned judge shall review the documents and either grant the Motion for Leave or direct such other action as the judge deems appropriate.
9. Upon motion of any party, the Court may determine that a previously filed document in any open or closed civil or criminal case is highly sensitive and direct the Clerk of the Court to remove the document or documents from the Court's electronic filing system and retain them non-electronically. A party's motion to treat a previously filed document as highly sensitive shall be filed electronically when possible, but a supporting statement explaining why the document is highly sensitive may be presented in hard copy to the Clerk of the Court if the explanation would reveal the highly sensitive information the party seeks to protect. If it is not possible to file the motion electronically, a hard copy of the motion may be presented to the Clerk's Office for filing.
10. The parties' responsibility for determining whether a document is highly sensitive does not preclude the Court from determining on its own motion that a document is highly sensitive and should be removed from the Court's electronic filing system and retained non-electronically.
11. Any questions about how a highly sensitive document should be filed may be directed to an assigned judge's chambers or the ECF helpdesk at: ecfhelp@ned.uscourts.gov.

Dated this 13th day of January, 2021.

BY THE COURT:



John M. Gerrard
Chief United States District Judge