

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PROCEDURES FOR THE FILING,)
SERVICE, AND MANAGEMENT OF)
HIGHLY SENSITIVE DOCUMENTS) STANDING O R D E R
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In response to the recent disclosure of wide-spread breaches of private sector and government computer systems, the Court adopts the following new procedures for defining, filing, serving, and maintaining highly sensitive sealed documents. (HSD). The Court finds good cause to file highly sensitive documents outside the CM/ECF system until further notice. Sealed matters that are not defined as highly sensitive will be filed and served in accordance with existing established procedures under 6 Cir. Rule 25 and the Guide to Electronic Filing.

1. Highly Sensitive Documents.

- a. Highly sensitive documents are defined as sealed applications for search warrants, applications for electronic surveillance under 18 U.S.C. § 2518, matters concerning national security, on-going unsealed criminal investigations, and other documents filed as highly sensitive documents in the originating proceedings. The initial designation of a document as highly sensitive is usually made in the originating court.

b. Most sealed documents are not within the definition of highly sensitive documents. Examples of sealed but not highly sensitive documents include presentence reports, pretrial release reports, pleadings related to cooperation in most criminal cases, social security records, administrative immigration records, sealed filings in most civil cases and any other document not designated by the originating court as highly sensitive documents.

2. Certificate for Highly Sensitive Document Protection. At the time of filing any appendix, brief, motions, exhibit, or other document containing material designated as highly sensitive in the originating proceeding, parties must file a “Certificate for Highly Sensitive Document Protection”. The certificate shall identify the highly sensitive material, provide a copy of the order or other authority for treating the material as highly sensitive, and the appellate document containing the highly sensitive material. These documents must be transmitted to the clerk of court in paper format, or in such digital format as approved by the clerk, and should be clearly marked as HIGHLY SENSITIVE MATERIAL. Prior to transmission, the filer should contact the clerk’s office to determine the appropriate electronic format and means of transmission for any digital media.

3. Motions for Highly Sensitive Document Designation and Treatment. Motions for HSD designation and treatment should be presented and resolved during the course of the originating procedure. Motions for HSD protection may be filed in this court only when (i) there is a change in circumstances that warrants reconsideration of the need for HSD protection; (ii) the need for protection arises in the first instance on appeal; (iii) additional material filed for the first time on appeal warrants protection; and, (iv) the highly sensitive nature of the material requires a level of

security greater than that provided through sealing in CM/ECF. The materials that are the subject of the motion will be afforded HSD protection pending the court's disposition of the motion. The motion will be transmitted in paper format, or in secured electronic format as the Clerk may direct. The motion must establish how the document falls within the definition of Highly Sensitive Documents and the potential for irreparable harm if the documents are not treated as HSD.

4. Filing of Highly Sensitive Documents:

- a. Appendices: When highly sensitive material is included in the appendix, it must be segregated from other volumes of the appendix and filed in a separate, highly sensitive volume of the appendix.
- b. Briefs, Motions, and Other Documents: When highly sensitive material is disclosed in a brief, motion, or any document other than an appendix, multiple versions of the document must be filed: (i) a highly sensitive version with highly sensitive material highlighted and (ii) a public version with highly sensitive material redacted; in addition, (iii) a sealed version with sealed material highlighted and publicly sensitive material redacted must be filed if the document also discloses sealed material that is not highly sensitive.
- c. Marking of Highly Sensitive Documents: The first page of any appendix, brief, motion, or other document tendered or filed as a highly sensitive document must be conspicuously marked "HIGHLY SENSITIVE DOCUMENT," and the document must be placed in an envelope marked "HIGHLY SENSITIVE DOCUMENT."
- d. Method of Filing: Parties shall file the highly sensitive document in paper format, or, if in digital media as the Clerk may direct, together with a paper copy of the related certificate or motion, in a sealed envelope marked "HIGHLY SENSITIVE DOCUMENT."

5. Removal of Highly Sensitive Documents from CM/ECF:

- a. A motion to remove a highly sensitive document from CM/ECF should be filed in the originating court in the first instance.
- b. A “Motion to Remove Document from CM/ECF” may be filed in this court when (i) there is a change in circumstances that warrants reconsideration of the need for highly sensitive document protection, (ii) the need for such protection arises in the first instance on appeal, (iii) additional material filed for the first time on appeal warrants such protection; and (iv) the highly sensitive nature of the material requires a level of security greater than that provided through sealing in CM/ECF. The motion should be transmitted to the clerk’s office in paper or such digital media as the clerk may direct. The motion will not be filed in CM/ECF.
- c. The court may, on its own motion, determine that a previously filed document is highly sensitive and direct that it be removed from CM/ECF.

6. Highly Sensitive Court Orders or Other Documents: If a court opinion, order, or other document discloses highly sensitive information, the document will be afforded the same protection afforded to highly sensitive documents filed by the parties, including filing in a secure paper filing system or secure standalone computer system and service on the parties via mail.

Dated this 22nd day of January, 2021.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk