

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

**FILING OF HIGHLY
SENSITIVE DOCUMENTS**

**DISTRICT COURT GENERAL ORDER
2022-5**

This order supersedes General Order 2021-1.

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

WHEREAS, 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; it is hereby

ORDERED that, effective as of the date of this General 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 all inconsistent provisions in existing local rules or other general orders of this Court.

1. Documents Subject to this Order:

- a. The filing procedures set forth below apply only to documents that contain highly sensitive information or which the filing party believes to contain highly sensitive information. Highly sensitive documents ("HSDs") are documents that contain highly sensitive information that is likely to be of interest to the intelligence service of a hostile foreign government and whose use or disclosure by a hostile foreign government would likely cause significant harm. Very few documents filed under seal in federal court are HSDs.
- b. The Court anticipates that HSDs may involve the following:
 - i. National security;
 - ii. Foreign sovereign interests;
 - iii. Cybersecurity;
 - iv. Ongoing law-enforcement investigations of foreign intelligence-gathering operations;
 - v. Information whose disclosure would risk the safety of public officials or the integrity of governmental operations;
 - vi. Non-public intellectual property, including trade secrets whose disclosure would benefit a hostile foreign government;
 - vii. The reputational interests of the United States; or
 - viii. Applications for search warrants or wiretaps in cases involving highly sensitive information.
- c. The following types of documents are generally not considered HSDs:
 - i. Presentence reports, pretrial release reports, and documents related to such reports;
 - ii. Pleadings related to cooperation in criminal cases;

- iii. Social Security records;
 - iv. Administrative immigration records; and
 - v. Most sealed filings in 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 criminal duty judge.

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

- a. If a case has not been opened, proceed as follows:
 - i. Counsel for the filing party shall prepare a motion to treat a document as an HSD and a proposed order in the same manner as a motion to restrict under D.C.COLO.LCrR 47.1(c) and D.C.COLO.LCivR 7.2(c). The motion shall explain why the proposed document constitutes an HSD under the criteria set out in paragraph 1 above or why it should otherwise be subject to filing protection as an HSD.
 - ii. Counsel for the filing party shall deliver to the criminal duty magistrate judge two paper copies of the motion, proposed order, and HSD. These documents shall be submitted in a sealed envelope marked “HIGHLY SENSITIVE DOCUMENT” along with counsel for the filing party’s name, telephone number, and e-mail address.
 - iii. The Court shall issue an order on the motion. If granted, counsel for the filing party shall then deliver the paperwork to the Clerk’s Office, which shall then assign the matter a case number. The Clerk’s Office shall maintain the HSD in a secure paper filing system or a secure standalone computer that is not connected to any network.
- b. If a case has been opened, proceed as follows:
 - i. Represented parties
 - 1. A represented party shall file electronically a motion to treat a document as an HSD and a proposed order in the same fashion as a motion to restrict under D.C.COLO.LCrR 47.1(c) and D.C.COLO.LCivR 7.2(c), except that a copy of the proposed HSD shall not be filed electronically. The motion shall explain why the proposed document constitutes an HSD under the criteria set out in paragraph 1 above or why it should otherwise be subject to the filing protection for HSDs. If the motion cannot be filed without revealing the highly sensitivity information contained within the HSD, then the motion should be filed in paper along with the HSD in accordance with paragraph a.ii below.
 - 2. As soon as practicable after the motion is filed, the filing party shall deliver to the Clerk’s Office (or the Court’s drop box if the front counter is closed) two paper copies of the HSD along with a certificate of service. These documents shall be submitted in a sealed envelope marked “HIGHLY SENSITIVE DOCUMENT” and marked with the applicable case number, attorney’s name, telephone number, and e-mail address.

3. The filing party shall serve the proposed HSD on the other parties as follows:
 4. Criminal cases – by any manner specified in Fed. R. Crim. P. 49(a)(3)(B) or (a)(4); or
 5. Civil cases – by any manner specified in Fed. R. Civ. P. 5(b)(2), other than service via the Court’s electronic filing system.
 6. 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. The Clerk’s Office will maintain the HSD in a secure paper filing system or a secure standalone computer system that is not connected to any network.
- ii. Pro se parties
1. Pro se parties authorized to file electronically shall follow the procedures for represented parties outlined above.
 2. Pro se parties not authorized to file electronically shall submit to the Clerk’s Office (or the Court’s drop box if the front counter is closed) two paper copies of a motion to treat a document as an HSD, the HSD sought to be filed, and a certificate of service. These documents shall be submitted in a sealed envelope marked “HIGHLY SENSITIVE DOCUMENT” and marked with the applicable case number, party’s name, and telephone number.
 3. The filing party shall serve the proposed HSD on the other parties as specified in paragraph 2.a.
 4. 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. The Clerk’s Office will maintain the HSD in a secure paper filing system or a secure standalone computer system that is not connected to any network.

3. Service of Highly Sensitive Court Orders

If the Court determines that a court order contains highly sensitive information, the Clerk’s office will file and maintain the order to that effect in a secure paper filing system or a secure standalone computer system that is not connected to any network and will serve paper copies of the order on the parties via mail.

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

- a. Upon motion of a party or upon its own motion, the Court may determine that a document or case 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 or a secure standalone computer system that is not connected to any network.

- 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 under the criteria set out in paragraph 1 above or why it should otherwise be subject to the filing protection for HSDs.

5. Questions about HSD Filing Procedures

Any questions about how an HSD should be filed with the Court pursuant to this General Order should be directed to the Clerk's Office at 303-844-3433.

Dated at Denver, Colorado this 11th day of April, 2022.

BY THE COURT



PHILIP A. BRIMMER
Chief United States District Judge