

Jan - 19 2021

Robert R. Carr
Clerk, U.S. District CourtUNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY**In Re:****PROCEDURES FOR THE FILING,
SERVICE, AND MANAGEMENT OF
HIGHLY SENSITIVE DOCUMENTS****GENERAL ORDER
NO. 21-01**

** ** ** ** **

The Court issues this General Order in response to recent disclosures of wide-spread breaches of both private sector and government computer systems. As a result of those breaches, federal courts are adding new security procedures to protect from disclosure various highly sensitive documents (“HSDs”) filed in matters before the Court. In particular, and as further described below, the Court finds that, pursuant to Federal Rule of Civil Procedure 5(d)(3)(A) and Federal Rule of Criminal Procedure 49(b)(3)(A), good cause exists to require all parties to file certain HSDs outside of the Court’s electronic filing system (“CM/ECF”), and to require the Clerk’s Office likewise to docket and maintain those filings outside that system.

To accomplish those objectives, effective as of the date of this Order and until such time as the Court orders otherwise, filing of the below-described HSDs shall be subject to the procedures and requirements outlined in this Order. This General Order supersedes any and all inconsistent provisions in existing Local Rules or other General Orders of this Court regarding the subject matter set forth herein.

1. Documents Subject to this Order

The filing procedures set forth below apply to all HSDs, *i.e.*, documents that contain highly sensitive information. The following types of documents are deemed HSDs:

- a) All applications for electronic surveillance under 18 U.S.C. § 2518 prior to disclosure required by law.
- b) Any document(s) in criminal or civil cases containing highly sensitive matters concerning: (i) national security interests; (ii) foreign sovereign interests; (iii) national cybersecurity; (iv) the involvement of public officials; (v) intellectual property or trade secrets impacting national security; (vi) the reputational interests of the United States; and/or (vii) other information that the filing party believes in good faith is similarly highly sensitive for purposes of this Order, requiring categorical exclusion from CM/ECF beyond general sealing as provided in LCrR 49.4 or LR 5.6.

The Court further anticipates that applications for search warrants as well as other investigatory tools and charging documents utilized by the United States may, but will not always, be HSDs prior to any disclosure required by law.

In contrast, the following types of documents generally are not considered HSDs (barring inclusion of highly sensitive information described in paragraph 1(a)): 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.

The party preparing and submitting the document shall be responsible for assessing whether a document is a HSD as defined by this Order, subject to review by the Court. Any dispute regarding whether a document is a HSD shall be resolved by the presiding judge or, when no presiding judge is assigned or if the presiding judge is unavailable, the chief judge.

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

Except for applications for electronic surveillance under 18 U.S.C. § 2518 as described in paragraph 1(a), if a party has a filing it believes is HSD as described in paragraph 1(b), the party must seek leave of the Court for such treatment.

a) United States:

- i. In a matter related to a criminal investigation or initiating charging document, the United States shall present a motion to treat a document as n HSD, proposed order, and the proposed HSD directly to the presiding judge. The motion shall identify why the proposed document constitutes a HSD as described in paragraph 1(b).
- ii. The United States shall serve the proposed HSD on the other parties as specified in paragraph 3(c) but only where service is required under the Local Rules and Federal Rules of Criminal Procedure.
- 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 securely 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.

b) Represented parties:

- iv. A represented party (to include the United States in civil cases) shall file a motion to treat a document as a HSD and a proposed order electronically under existing procedures (*see* LR 5.5 and LCrR 49.3), except that a copy of the proposed HSD shall not be filed electronically. The motion shall identify why the proposed document constitutes a HSD as described in paragraph 1(b).
- v. As soon as practicable after the motion is filed, the filing party shall deliver to the Clerk's Office the HSD as specified in paragraphs 3(a)-(b).

- vi. The filing party shall serve the proposed HSD on the other parties as specified in paragraph 3(c).
- vii. 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 securely 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.

c) *Pro se* parties:

- i. *Pro se* parties shall submit to the Clerk's Office for filing a motion to treat a document as a HSD, the HSD sought to be filed, and a certificate of service in the form of two paper copies.
- ii. The filing party shall serve the proposed HSD on the other parties as specified in paragraph 3(c).
- 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 securely 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. **Filing of Authorized HSDs**

- a) A party filing a HSD shall submit to the Clerk's Office the HSD, the certificate of service, and, if applicable, a copy of the order authorizing the treatment of that document as highly sensitive in the form of two paper copies.
- b) The required documents, unfolded, shall be submitted to the Clerk's Office in a sealed envelope clearly marked "HIGHLY SENSITIVE DOCUMENT." The outside of the

envelope shall be affixed with a copy of the HSD's caption page (with confidential information redacted).

c) The filing party shall serve the HSD on the other parties as follows:

- i. Civil cases: By any manner specified in Civil Rule 5(b)(2), except for service via CM/ECF; or
- ii. Criminal cases: By any manner specified in Criminal Rule 49(a)(3)(B) or (a)(4).

d) The Clerk's Office will make an informational docket entry in CM/ECF indicating that the HSD was filed with the Court and will maintain the HSD in a secure paper filing system or a secure standalone computer system that is not connected to any network.

4. 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 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.

5. Removal of Existing HSDs or Highly Sensitive Cases from CM/ECF

- a) Upon motion of a party or upon its 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 CM/ECF 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 a HSD or highly sensitive case from CM/ECF shall explain why such document or case is highly sensitive under the criteria set out in this Order, or why it should otherwise be subject to the heightened protection for HSDs. Any such

motion to remove a HSD or highly sensitive case shall be filed, together with a proposed order, electronically under existing procedures.

6. Questions about HSD Filing Procedures

Any questions about how a HSD should be filed with the Court pursuant to this General Order should be directed to the Lexington Clerk's Office at (859) 514-2252 or (866) 485-6349 (Toll Free).

Dated: January 19, 2021.



A handwritten signature in black ink, appearing to read "Danny C. Reeves".

Danny C. Reeves, Chief Judge
United States District Court
Eastern District of Kentucky