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AO 21-001 | US DISTRICT COURT, FLORIDA, MIDDLE DISTRICT

YEAR: 2021

NUMBER: 3:21-mc-00001-TJC

TITLE: AMENDED ORDER REGARDING PROCEDURES FILING HIGHLY
SENSITIVE DOCUMENTS

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**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

In re: Administrative Orders of the Chief Judge

Case No. 3:21-mc-1-TJC

**AMENDED ORDER REGARDING PROCEDURES FOR FILING
HIGHLY SENSITIVE DOCUMENTS**¹

On January 6, 2021, the Judicial Conference of the United States notified federal courts of widespread cybersecurity breaches of government computer systems.² In response, the Court is implementing a new system for filings with highly sensitive, non-public information. Under Rule 5(d)(3)(A), Federal Rules of Civil Procedure, and Rule 49(b)(3)(A), Federal Rules of Criminal Procedure, good cause exists to require the filing of a “highly sensitive document” (HSD), as described below, in paper format outside of the Case Management/Electronic Case Files (CM/ECF) system, using the procedures in this Amended Order.

1. Definition of an HSD

An HSD is a document that contains sensitive or confidential information that may be of interest to the intelligence service of a hostile foreign government and whose use or disclosure by a hostile foreign

¹ This Amended Order supersedes all procedures outlined in the Court’s January 14, 2021 Order (Doc. 6). The January 14, 2021 Order is VACATED.

² For more information on the cybersecurity breach, [click here](#) to read a news release issued by the Administrative Office of the United States Courts.

government would likely cause significant harm. The Court anticipates that few documents filed in this Court will qualify as HSDs. The Court expects that HSDs may be filed in a case involving:

- a. national security;
- b. a foreign sovereign interest;
- c. cybersecurity;
- d. an ongoing law-enforcement investigation or intelligence-gathering operation;
- e. information that would risk the safety of a public official or the integrity of a governmental operation; or
- f. non-public intellectual property, including a trade secret.³

The following types of documents may often be classified as HSDs:

- a. an application for a search warrant;⁴ and

³ Most business records, even if filed under seal, will not qualify as an HSD.

⁴ Rule 4.1, Federal Rules of Criminal Procedure, provides that search warrants and other law enforcement investigative requests may be submitted for court approval by reliable electronic means. But given the on-going concerns of cyber security threats, the “best practice” is to decline to permit transmission of search warrants and other law enforcement investigative requests by email between the United States Attorney’s Office and the Court. There may be logistical impediments or emergent reasons necessitating transmission by email of a search warrant or other law enforcement investigative request. Thus, a *per se* rule prohibiting the transmission of warrants and other law enforcement requests by email is unwarranted. Rather, each judge should follow the best practice but decide in their own judgment whether to accept by email non-HSD warrants and other law enforcement requests.

- b. an application for electronic surveillance under 18 U.S.C. § 2518.

The following types of documents are unlikely to be classified as HSDs:

- a. a presentence investigation report and related documents;
- b. a pretrial-release report and related documents;
- c. the administrative record in a social security case;
- d. the administrative record in an immigration case; and
- e. a sealed filing in a civil case.

2. Motion to Treat a Document as an HSD

A party contending a document should be treated as an HSD must request permission to file the document outside of CM/ECF by filing a “Motion to Treat a Document as an HSD.” The motion must be filed using the procedures in section 3 below. The motion must comply with Local Rule 1.11(c)(2) – (7), state why the document is an HSD, and state why filing the document in paper (as opposed to filing the document under seal on CM/ECF) is necessary.⁵ If the motion is granted, the filing party shall submit the HSD to the court using the procedures in section 3 below.

⁵ For most non-public documents, filing the document under seal on CM/ECF under Local Rule 1.11 will suffice to protect the information.

A dispute about whether a document is an HSD will be resolved by the presiding judge or, if no presiding judge is assigned, the administrative judge of the division.

3. Filing of Authorized HSDs

When filing an HSD motion or an HSD, a party must submit two paper copies to the clerk's office. If applicable, the filing party also must submit a certificate of service and two copies of the order authorizing the filing to be treated as an HSD. The motion or documents must be submitted to the clerk's office unfolded in a sealed envelope marked "HIGHLY SENSITIVE DOCUMENT." A copy of the applicable caption page (with confidential information redacted) must be attached to the outside of the envelope.

If applicable, the filing party must serve the motion or HSD on the other parties consistent with the Federal Rules of Criminal and Civil Procedure, but not using CM/ECF.

The clerk's office will prepare an informational docket entry in CM/ECF showing that the HSD was filed with the court and will maintain the HSD in a secure paper filing system.

4. Court Orders with Highly Sensitive Information

A court order containing HSD or a ruling on an HSD issue will be maintained in a secure paper filing system and served through U.S. mail.

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

Upon a party's motion or the court's own motion, the court may determine that a document or a case is an HSD and order its removal from CM/ECF. A party's motion must comply with Local Rule 1.11(c)(2) – (7), state why the document is an HSD, and state why removal from CM/ECF is necessary.

6. Public Right of Access

There is a strong presumption favoring public access to court filings. Like other sealed filings, an HSD designation should be used only when necessary to protect highly classified or highly confidential information.

DONE AND ORDERED in Jacksonville, Florida, on February 10, 2021.



Timothy J. Corrigan

TIMOTHY J. CORRIGAN
Chief United States District Judge

APPENDIX



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