

ORIGINALLY FILED
2021 JAN 29
AMENDED AND REFILED
2024 MAY 22
CLERK
U.S. DISTRICT COURT

THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

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

**GENERAL ORDER 21-002
(AMENDED MAY 22, 2024)**

On January 29, 2021, the Court entered General Order No. 21-002, which is hereby amended as follows:

WHEREAS, the District of Utah is updating its security procedures to uniformly protect highly sensitive documents (HSDs), a narrow subset of sealed documents that must, for their protection, be stored outside the court's electronic systems;

THE COURT FINDS good cause exists to permit nonelectronic filing and service of highly sensitive documents under [Civil Rule 5\(d\)\(3\)\(A\)](#) and [Criminal Rule 49\(b\)\(3\)\(A\)](#).

THEREFORE, IT IS HEREBY ORDERED that, effective as of the date of this order and until such time as the court orders otherwise, HSDs will be filed and served in paper form (or, if digital media, on a secure electronic device, such as a flash drive), in accordance with this Amended General Order, and will be maintained by the Clerk's Office in a secure paper filing system or secure standalone computer system that is not connected to any network.¹

¹ This guidance does not apply to classified information, which should be handled according to the Classified Information Procedures Act (CIPA) and the Chief Justice's Security Procedures related thereto, 18 U.S.C. app 3 §§ 1, 9. The Chief Justice's Security Procedures (criminal prosecutions) and the Department of Justice (DOJ) regulation 28 C.F.R. § 17.17(c) (civil actions) govern classified information in any form in the custody of a court.

1. Documents and Materials Subject to This Order

- A. Definition: A highly sensitive document (“HSD”) is a document or other material that contains sensitive, but unclassified, information that warrants exceptional handling and storage procedures to prevent significant consequences that could result if the information were obtained or disclosed in an unauthorized way. Although frequently related to law enforcement materials, especially sensitive information in a civil case could also qualify for HSD treatment.
- i. Examples of HSDs: Examples include *ex parte* sealed filings relating to national security investigations, cyber investigations, and especially sensitive public corruption investigations; and documents containing a highly exploitable trade secret, financial information, or computer source code belonging to a private entity, the disclosure of which could have significant national or international repercussions.
 - ii. Exclusions: Most materials currently filed under seal do not meet the definition of an HSD and do not merit the heightened protections afforded to HSDs. The form or nature of the document, by itself, does not determine whether HSD treatment is warranted. Instead, the focus is on the severity of the consequences for the parties or the public should the document be accessed without authorization. Most presentence reports, pretrial release reports, pleadings related to cooperation in criminal cases, social security records, administrative immigration records, applications for search warrants, interception of wire, oral or electronic communications under 18 U.S.C. § 2518, and applications for pen registers, trap and trace devices would not meet the HSD definition.
- B. HSDs vary in their physical form and characteristics. They may be paper, electronic, audiovisual, microform, or other media. The term “document” includes all recorded information, regardless of its physical form or characteristics.

2. Filing a Motion for HSD Designation

- A. Any party seeking to file an HSD must seek leave of court in the manner outlined below.
 - i. A motion for HSD designation must be accompanied by a certification of the movant's good-faith belief that the material meets the HSD definition.
 - ii. The moving party must articulate why HSD treatment is warranted, including, as appropriate: the contents of the document; the nature of the investigation or litigation; and the potential consequences to the parties, the public, or national interests, in the event the information contained in the document is accessed or disseminated without authorization.
 - iii. The moving party must include a proposed order that provides the information stated in paragraph 3 below.
 - iv. The moving party must serve the motion, proposed order, and proposed HSD (unless moving *ex parte*) on the other parties by any secure manner permitted under Fed. R. Civ. P. 5(b) and Fed. R. Crim. P. 49(a), except the motion, proposed order, and proposed HSD may not be served electronically.
- B. The motion, proposed order, proposed HSD, and a certificate of service (unless moving *ex parte*), must be filed, in paper, with the Clerk's Office in a sealed envelope marked "HIGHLY SENSITIVE DOCUMENT." A case caption page must be affixed to the outside of the envelope (with confidential information redacted, if necessary).²
- C. A courtesy copy of all documents must also be provided, in a separate sealed envelope, with a caption page attached to the outside of the envelope (with any confidential information redacted, if necessary). The envelope must be

² The motion, proposed order, and proposed HSD material may be filed in the Clerk's Office at the Orrin G. Hatch United States Courthouse in Salt Lake City, or at the courthouse in St. George for Southern Region cases. However, all HSDs will be maintained by the Clerk's Office in Salt Lake City.

marked "HIGHLY SENSITIVE DOCUMENT" and "COURTESY COPY."

D. A response to the motion is not required unless the court orders otherwise.

3. Order Granting HSD Designation

An order granting a motion seeking HSD designation, or directing the filing of a document as an HSD on the court's own motion, must:

- A. State the identity of the persons who are to have access to the documents without further order of the court; and
- B. Set forth Instructions for the duration of the HSD treatment. HSDs are stored temporarily or permanently offline as the situation requires. When designating a document as an HSD, the court's order should indicate when the designation will automatically lapse or when the designation should be revisited by the judge. HSDs should be migrated as sealed documents to the court's electronic docketing system and unsealed as soon as the situation allows.

4. Filing An HSD

- A. A copy of the order granting HSD designation must be included with any document filed as an HSD.
- B. 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. The Clerk's Office will make an informational docket entry in the court's electronic filing system indicating that the HSD was filed with the court. The docket entry shall not include personal or other identifying details related to or contained with the HSD.

5. Judicial Determination.

- A. The court will determine whether a document meets the HSD definition by evaluating whether a party has properly articulated sufficient reasons for such treatment, including the consequences for the matter, should the document be exposed.
- B. The court will consider properly articulated concerns that the unauthorized access or disclosure of the information contained in the document at issue would result insignificant adverse consequences that outweigh the

administrative burden of handling the document as an HSD.

- C. As a general matter, the court will give careful and appropriate consideration to the concerns articulated by the executive branch in matters implicating the authority of the executive branch to oversee the military and safeguard national security. If relevant, the court has the discretion to consider the impact of the heightened protection provided by offline placement to any other party's right of access.
- D. The fact that a document may contain sensitive, proprietary, confidential, personally identifying, or financial information about an entity or an individual, that may justify sealing of the document or case, does not alone qualify the document as an HSD.
- E. When designating a document as an HSD, the court will indicate when the designation will automatically lapse or when the designation should be revisited.

6. Service of Highly Sensitive Court Orders

An opinion or order entered by the court related to an HSD may itself constitute an HSD if it reveals sensitive information. If the court determines that a court order contains highly sensitive information and qualifies as an HSD, the Clerk's Office will file and maintain the order in a secure paper filing and will serve paper copies of the order on the parties via mail.

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

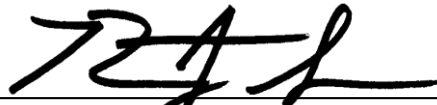
- A. On a party's motion or on its own, the court may determine that a case, document, or any portion of a document, that has been filed electronically is highly sensitive and direct that the HSD or case be removed from the court's electronic filing system and be stored outside the court's electronic systems.
- B. A party's motion to remove an HSD or highly sensitive case from the court's electronic filing system must satisfy the criteria set forth in paragraph 2.

8. 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 801-524-6100 or utdecf_clerk@utd.uscourts.gov.

IT IS SO ORDERED AMENDED, this 22nd day of May, 2024.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'R. J. Shelby', written over a horizontal line.

ROBERT J. SHELBY
CHIEF UNITED STATES DISTRICT JUDGE