
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

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

GENERAL ORDER 21-002

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

THE COURT FINDS that, pursuant to [Civil Rule 5\(d\)\(3\)\(A\)](#) and [Criminal Rule 49\(b\)\(3\)\(A\)](#), good cause exists to require all parties to file and serve certain highly sensitive documents outside of the court's electronic filing system, CM/ECF.

THEREFORE, IT IS HEREBY ORDERED that, effective as of the date of this order and until such time as the court orders otherwise, the filing of certain highly sensitive documents is subject to the procedures and requirements set forth below. This order supersedes all inconsistent provisions in existing local rules or other General Orders of this court.

1. Documents Subject to This Order

- a. 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.
- b. Very few documents filed under seal in federal court contain highly sensitive information. Nevertheless, 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 that, if disclosed, 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. Documents related to cooperation in criminal cases;
 - iii. Social Security records;
 - iv. Administrative immigration records; and
 - v. Most sealed filings in civil cases.
- d. Disputes as to whether a document is an HSD shall be resolved by the presiding judge or, when no presiding judge is assigned or available, the criminal duty magistrate judge.

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

- a. Represented parties
- i. A represented party seeking to treat a document as an HSD must file a motion, along with a proposed order. If necessary, the motion and proposed order may be filed in paper under seal at the Orrin G. Hatch U.S. Courthouse in Salt Lake City.¹ Otherwise, the motion and proposed order may be filed electronically. In any event, the proposed HSD must not be filed electronically or sent by email to the court.
 1. The motion must explain why the proposed document constitutes an HSD under the criteria set out in paragraph 1.b. above or why it should otherwise be subject to the heightened protection for HSDs.
 2. If the motion and proposed order are filed electronically, as soon as practicable after they are filed, the filing party must deliver to the Clerk's Office in the Orrin G. Hatch United States Courthouse in Salt Lake City the HSD sought to be filed, along with a certificate of service. The document must be filed in a sealed envelope with the caption page attached to the envelope (with any confidential information redacted). The envelope must be marked "HIGHLY SENSITIVE DOCUMENT."
 3. When filing documents in paper at the Orrin G. Hatch United States Courthouse in Salt Lake City, a courtesy copy must be provided at

¹ Paper copies of the motion and proposed order must not be filed in the St. George Courthouse. As discussed below, a copy of all paper documents must be served on the presiding judge in Southern Region cases.

- the time of filing the original document(s) and must be provided in a sealed envelope with the caption page attached to the envelope (with any confidential information redacted). The envelope must be marked “HIGHLY SENSITIVE DOCUMENT” and “COURTESY COPY.”
- ii. The filing party must serve the HSD, along with the motion and proposed order, if filed in paper, on the other parties as follows:
 - 1. Civil cases: by any manner specified in [Civil Rule 5\(b\)\(2\)](#), but not by service via the court’s electronic filing system; or
 - 2. Criminal cases: by any manner specified in [Criminal Rule 49\(a\)\(3\)\(B\) or \(a\)\(4\)](#).
 - iii. In Southern Region cases, the filing party must also serve the HSD, along with the motion and proposed order, if filed in paper, on the presiding judge in any manner set forth above, except that service must not be by email.
 - iii. Other parties need not respond to the motion, unless otherwise ordered by the court.
 - iv. 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.
- b. Pro se parties
- i. Pro se parties must file in the Clerk’s Office at the Orrin G. Hatch United States Courthouse in Salt Lake City a motion to treat a document as an HSD, the HSD sought to be filed, and a certificate of service.² These documents must be filed in a sealed envelope with the caption page affixed to the envelope (with any confidential information redacted). The envelope must be marked “HIGHLY SENSITIVE DOCUMENT.”
 - ii. A courtesy copy is required at the time of filing the original document(s), except in Southern Region cases.³ Courtesy copies must be provided in a sealed envelope with the caption page attached to the envelope (with any confidential information redacted). The envelope must be marked “HIGHLY SENSITIVE DOCUMENT” and “COURTESY COPY.”
 - iii. The filing party must serve the HSD, the motion, and the proposed order on the other parties as follows:

² Paper copies of the motion and proposed order must not be filed in the St. George Courthouse.

³ In Southern Region cases, a copy of the documents must be served on the presiding judge at the St. George Courthouse. No courtesy copy is required when filing the original documents at the Orrin G. Hatch United States Courthouse in Salt Lake City

1. Civil cases: by any manner specified in [Civil Rule 5\(b\)\(2\)](#), but not by for service via the court's electronic filing system; or
 2. Criminal cases: by any manner specified in [Criminal Rule 49\(a\)\(3\)\(B\) or \(a\)\(4\)](#).
- iv. In Southern Region cases, the filing party must also serve the HSD, the motion, and the proposed order on the presiding judge in any manner set forth above, except that service must not be by email.
 - v. Other parties need not respond to the motion, unless otherwise ordered by the court.
 - vi. 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 at the Orrin G. Hatch United States Courthouse in Salt Lake City will maintain the HSD in a secure paper filing system.

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 in a secure paper filing and will serve paper copies of the order on the parties via mail.

4. Retention of HSDs

The Clerk's Office must maintain all HSDs in a secure paper filing system in accordance with the judiciary policy for records disposition. If the court denies a motion for a document to be treated as an HSD, the Clerk's Office will return the proposed HSD to the filer and will not retain a copy.

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

- a. Upon motion of a party or upon the court's own motion, 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 maintained by the Clerk's Office in a secure paper filing system.
- b. A party's motion to remove an HSD or highly sensitive case from the court's electronic filing system must explain why such document or case is highly sensitive under the criteria set out in paragraph 1.b. above or why it should otherwise be subject to the heightened protection for HSDs.
- c. Other parties need not respond to the motion, unless otherwise ordered by the court.

6. 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, this 29th day of January, 2021.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'RJS', is written over a horizontal line.

ROBERT J. SHELBY
CHIEF UNITED STATES DISTRICT JUDGE