

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

FILED
CLERK'S OFFICE
United States District Court
Eastern District of Tennessee
Date: *Feb 02, 2021, 9:32 am*

IN RE:)
) SO-21-03
)
)
PROCEDURES FOR THE FILING,)
SERVICE, AND MANAGEMENT OF) Chief District Judge
SEALED DOCUMENTS CONTAINING) Travis R. McDonough
HIGHLY SENSITIVE INFORMATION)
)

STANDING ORDER

In response to recent disclosures of possible widespread breaches of both private sector and government computer systems, federal courts are adding new security procedures to protect sealed documents containing highly sensitive information (“HSI”) that are filed in the Court’s electronic filing system (CM/ECF). In particular, the Court finds that, pursuant to Fed.R.Civ.P. 5(d)(3)(A) and Fed.R.Crim.P. 49(b)(3)(A), good cause exists to require parties to file sealed documents containing HSI outside of CM/ECF.

Effective immediately, and until such time as the Court directs otherwise, the filing of sealed documents with HSI shall be subject to the procedures and requirements set forth below.

1. Documents Subject to this Order

“HSI” does not refer to all sensitive or confidential information. Instead, HSI refers **only** to sensitive or confidential 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 contain HSI.

The Court anticipates that sealed documents containing HSI may often be filed in cases involving the following:

- 1) National security;
- 2) Foreign sovereign interests;
- 3) Cybersecurity;
- 4) Ongoing law-enforcement investigations or intelligence-gathering operations;
- 5) The extent of domestic or international interests;
- 6) Information that would put at risk the safety of public officials or the integrity of governmental operations;
- 7) Non-public intellectual property including trade secrets; or
- 8) The reputational interests of the United States.

The Court also anticipates that the following types of sealed documents (including related and associated documents) may often contain HSI:

- 1) Applications for search warrants;
- 2) Applications for electronic surveillance under 18 U.S.C. § 2518;
- 3) Applications for a pen register or trap and trace device under 18 U.S.C. § 3122;
- 4) Applications for an order under 18 U.S.C. § 2703(d); and
- 5) Grand jury disclosures and non-disclosure orders.

The Court anticipates that the following documents are unlikely to contain HSI:

- 1) Presentence reports and pre-trial release reports and documents related to such reports;
- 2) Pleadings related to cooperation in most criminal cases;
- 3) Social security records;
- 4) Administrative records in immigration cases; and
- 5) Most sealed filings in most civil cases.

Any dispute as to whether a sealed document contains HSI shall be resolved by the presiding district or magistrate judge or, if no presiding judge is assigned, the Chief Judge.

2. Filing of Sealed Documents Containing HSI

A filing party must determine if a document that would be filed under seal contains HSI.

If the filing party determines that a document contains HSI, the filing party **must not** file the document in the Court's electronic filing system but must instead:

- 1) Complete the "Sealed Document with HSI Placeholder Form," which can be found on the Court's website.
- 2) File the Placeholder Form in ECF in place of the sealed document with HSI using the applicable ECF event.

- 3) Print the filed Placeholder Form from ECF as well as a copy of the Notice of Electronic Filing (“NEF”) for the Placeholder Form and the sealed document with HSI.
- 4) Place the following in a sealed envelope marked “HIGHLY SENSITIVE DOCUMENT” and addressed to the Clerk’s Office:
 - a. A copy of the NEF;
 - b. A copy of the Placeholder Form;
 - c. The document with HIS; and
 - d. A courtesy copy of each document.
- 5) Contemporaneously with filing of the Placeholder Form in ECF, deliver or place in the mail the envelope to the Clerk's Office.

The filing party shall serve the sealed document containing HSI on other parties as follows:

1. Civil cases – by any manner specified in Fed.R.Civ.P. 5(b)(2), except for service through the Court’s electronic filing system.
2. Criminal cases – by any manner specified in Fed.R.Crim.P. 49(a)(3)(B) or (a)(4), except for service through the Court’s electronic filing system.

The Clerk’s Office will maintain the sealed document with HSI in a secure paper filing system.

3. Court Review

The Court may review any document filed as a sealed document with HSI to determine if the document was appropriately filed as a sealed document with HSI, or may review any document that is filed as a sealed or restricted document to determine if the document should be filed as a sealed document with HSI.

4. Removal of Existing Sealed Documents with HSI from the Court’s Electronic Filing System


Upon motion of a party or upon its own motion, the presiding judge in any matter may determine that any document that has been filed electronically contains HSI and direct that the

document(s) containing HSI be removed from the Court's electronic filing system and maintained by the Clerk's Office in a secure paper filing system.

5. Service of Highly Sensitive Court Orders

If the Court determines that a Court order contains HSI, the Clerk's Office will file and maintain the order in a secure paper filing system and will serve paper copies of the order on the parties by mail.

SO ORDERED.



TRAVIS R. MCDONOUGH
UNITED STATES DISTRICT JUDGE