

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

IN RE: HIGHLY SENSITIVE DOCUMENTS /

Standing Order 2024-2

WHEREAS, federal courts are updating their 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 that, pursuant to Fed. R. Civ. P. 5(d)(3)(A) and Fed. R. Crim. P. 49(b)(3)(A), good cause exists to permit the filing of HSDs outside of the Court's electronic filing system;

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, in accordance with the procedures and requirements set forth below. In all cases, the filing party bears the burden to identify any proposed HSD and file a Motion to Designate HSDs pursuant to the procedures set forth in Sections II and III. This Standing Order supersedes any and all inconsistent provisions in existing local rules or other standing orders of this Court.

I. Documents 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 such information were obtained or disclosed in an unauthorized manner. Although frequently related to law enforcement materials, especially sensitive information in a civil case could also qualify for HSD treatment.

- i. **Examples of HSDs:** *Ex parte* sealed filings relating to national security investigations, cyber investigations, and especially sensitive public corruption investigations; 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, or trap and trace devices would not meet the HSD definition.

B. Criteria

- i. The burden is on the party, including the Department of Justice and other law enforcement agencies, to identify for the court those documents that the party believes qualify as HSDs and the basis for that belief.
- ii. Motions for HSD treatment must articulate why HSD treatment is warranted, including, as appropriate: the contents of the document; the nature of the investigation or litigation; 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.

II. HSD Procedure for Warrant Applications in Miscellaneous Cases

When the U.S. Attorney's Office or agent presents an application for a search warrant, application for electronic surveillance under 18 U.S.C. § 2518, or other warrant application and requests that it be designated as an HSD, the Assistant U.S. Attorney assigned to the matter will present to the duty judge in paper: the warrant application; the Motion to Designate Highly Sensitive Documents; and a Proposed Order to Designate Highly Sensitive Documents. The motion shall explain why each proposed document should be afforded treatment as an HSD under the criteria set forth in Section I. The Proposed Order to Designate Highly Sensitive Documents must state the identity of the persons who are to have access to the document without further order of the court and the date on which the HSD designation will expire or be reviewed by the Court.

The duty judge will determine whether the documents qualify as HSDs. If the duty judge grants the motion, an order will be filed in the miscellaneous case outside of CM/ECF. The Clerk's Office will store the filed documents in a secure paper filing system or in a stand-alone computer.

If the duty judge denies the motion, Clerk's Office staff will file the motion, warrant application, and order denying the motion in the miscellaneous case in CM/ECF, and the case will remain sealed unless otherwise ordered.

III. HSD Procedure in All Other Cases

The filing party shall deliver to the Clerk's Office in paper two sets of the following documents: the Motion to Designate Highly Sensitive Documents; the proposed HSDs; a Proposed Order to Designate Highly Sensitive Documents; and, unless the documents are submitted *ex parte*, a certificate of service for the motion. The motion shall explain why each proposed document should be afforded treatment as an HSD under the criteria set forth in Section I. The Proposed Order to Designate Highly Sensitive Documents must state the identity of the persons who are to have access to the document without further order of the court and the date on which the HSD designation will expire or be reviewed by the Court.

Each set is to be submitted in a separate sealed envelope, each marked "HIGHLY SENSITIVE DOCUMENT." The outside of each envelope shall be affixed with a copy of the motion's first page (with confidential information redacted) and the CM/ECF case number, unless the documents subject to the motion are case initiating documents for which a case number has not been assigned.

Unless the Motion to Designate Highly Sensitive Documents, proposed HSDs, and proposed order are submitted *ex parte*, the filing party shall serve the motion, proposed HSDs, and proposed order on the other parties as follows:

Civil cases - by any manner specified in Fed. R. Civ. P. 5(b)(2), except for service via the Court's electronic filing system; or

Criminal cases - by any manner specified in Fed. R. Crim. P. 49(a)(3)(B) or (a)(4).

Clerk's Office staff will docket an informational entry in CM/ECF restricted to court staff indicating an HSD was filed with the court. The Clerk's Office will store the filed documents in a secure paper filing system or in a stand-alone computer.

Any dispute as to whether a document is an HSD shall be resolved by the presiding judge or, when no presiding judge is assigned, by the duty judge. The assigned judge retains the discretion to set a briefing schedule on the matter. The Court will issue an order deciding the Motion to Designate Highly Sensitive Documents.

If the Court grants the Motion to Designate Highly Sensitive Documents, Clerk's Office staff will docket the order in CM/ECF if the Court determines the order does not contain highly sensitive information. If the Court determines that a court order contains highly sensitive information, the Clerk's Office will store the order in a secure paper filing system or in a stand-alone computer, and will serve paper copies of the order on the parties via mail.

If the Court denies the Motion to Designate Highly Sensitive Documents, Clerk's Office staff will docket the motion, order, and any related documents under seal in CM/ECF unless otherwise ordered. To file the document that had been subject to the motion, the filer may employ standard filing procedures for documents that are considered sensitive or confidential but do not meet the definition of an HSD.

This Order does not change any filing procedures for documents that are considered sensitive or confidential and filed under seal but do not meet the definition of HSDs.

IT IS SO ORDERED. DATED this 8th day of May, 2024.



MICHAEL J. MCSHANE
Chief U.S. District Judge