

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF ARKANSAS**

IN RE:	)	
PROCEDURES FOR THE FILING,	)	GENERAL ORDER
SERVICE, AND MANAGEMENT OF	)	2021-01
HIGHLY SENSITIVE DOCUMENTS	)	
	)	

**WHEREAS**, in response to recent disclosures of wide-spread 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 certain highly sensitive documents 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, the filing of certain highly sensitive documents shall be subject to the procedures and requirements set forth below. This General Order supersedes any and all inconsistent provisions in existing local rules or other general orders of this court.

**1. Documents Subject to this Order**

The filing procedures set forth below apply to documents that contain highly sensitive information.

- a. The following types of documents are deemed highly sensitive documents (HSDs):
  - i. Applications for certain search warrants that the United States Attorney’s Office or any judge of this District determines contains highly sensitive information; and
  - ii. Applications for electronic surveillance under 18 U.S.C. § 2518.
- b. Other documents may be deemed HSDs on motion of a party. Factors the Court may use in determining whether a proposed filing should be considered an HSD include whether the case involves matters of national security, foreign sovereign interest, or cybersecurity; the extent of domestic or international interests; the involvement of public officials; intellectual property or trade secrets; or the reputational interests of the United States.
- c. The following types of documents generally are not considered HSDs: Presentence reports, pretrial release reports, pleadings related to cooperation in

most criminal cases, social security records, administrative immigration records, and sealed filings in many civil cases.

- d. Any dispute as to whether a document is an HSD shall be resolved by the presiding judge or, when no presiding judge is assigned, the chief judge.

## **2. Filing of Authorized HSDs**

- a. A party filing an HSD pursuant to a court order or applicable law shall submit to the clerk's office the HSD, the certificate of service, and, if applicable, a copy of the court order authorizing the treatment of that document as highly sensitive in the form of either two paper copies or an electronic copy on a secure electronic device (as described in paragraph 6 below).
- b. The required documents, unfolded, or the secure electronic device shall be submitted to the clerk's office in a sealed envelope marked "HIGHLY SENSITIVE DOCUMENT." The outside of the envelope shall be affixed with a copy of the HSD's caption page (with confidential information redacted).
- c. The document or secure electronic device should be submitted in person or via mail to this Court's Fort Smith office:

District Court Clerk  
30 South 6<sup>th</sup> St. Room 1038  
Fort Smith, AR 72901

- d. The filing party shall serve the HSD on the other parties as follows:
  - i. Civil cases - by any manner specified in Civil Rule 5(b)(2), except for service via the court's electronic filing system; or
  - ii. Criminal cases - by any manner specified in Criminal Rule 49(a)(3)(B) or (a)(4).
- e. 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 and will maintain the HSD in a secure standalone computer system that is not connected to any network.

## **3. Filing of Motions to Treat a Document as an HSD**

- a. Represented parties
  - i. A represented party shall file a motion to treat a document as an HSD using the Motion to Seal event in the ECF system. Do not attach a copy of the proposed HSD to the motion. The motion shall 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.
  - ii. As soon as practicable after the motion is filed, the filing party shall deliver to the clerk's office the HSD sought to be filed along with a certificate of service in the form of either two paper copies or an electronic

copy on a secure electronic device (as described in paragraph 6 below). These documents or secure electronic device should be packaged as specified in paragraph 2.b.

- iii. The filing party shall serve the proposed HSD on the other parties as specified in paragraph 2.d.
- 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 standalone computer system that is not connected to any network.

b. Pro se parties

- i. Pro se parties shall submit to the clerk's office for filing a motion to treat a document as an HSD, the HSD sought to be filed, and a certificate of service in the form of either two paper copies or an electronic copy on a secure electronic device (as described in paragraph 6 below). These documents or secure electronic device should be packaged as specified in paragraph 2.b.
- ii. The filing party shall serve the proposed HSD on the other parties as specified in paragraph 2.d.
- iii. 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 standalone computer system that is not connected to any network.

**4. 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 standalone computer system that is not connected to any network and will serve paper copies of the order on the parties via mail.

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

- a. Upon motion of a party or upon its own motion, the court may determine that a document, case, or any portion of it, 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 standalone computer system that is not connected to any network.
- b. A party's motion to remove an HSD or highly sensitive case from the court's electronic filing system shall 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.


**6. Secure Electronic Device**

The Western District of Arkansas will only accept USB flash drives for the purpose of receiving digital HSD's. Flash drives will be destroyed, not to be returned, upon confirmation that the materials have been successfully uploaded to a secure standalone computer system.

**7. 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 [helpdesk@arwd.uscourts.gov](mailto:helpdesk@arwd.uscourts.gov).

IT IS SO ORDERED, this 15<sup>th</sup> day of January, 2021.

  
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Honorable Susan O. Hickey  
Chief United States District Judge  
Western District of Arkansas