

1/12/2021

Clerk, U.S. District Court
District of Montana
Missoula DivisionIN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANAIN RE: PROCEDURES FOR THE
FILING, SERVICE, AND
MANAGEMENT OF HIGHLY
SENSITIVE DOCUMENTS

STANDING ORDER No. BMM-9

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 (“HSDs”) filed with the court’s electronic filing system. Based on advice from the Administrative Office of the United States 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 HSDs outside of the court’s electronic filing system.

Accordingly, 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 HSDs shall be subject to the procedures and requirements set forth below. This Standing Order supersedes any and all inconsistent provisions in existing local rules or other Standing Orders of this court.

1. Documents Subject to this Order

The filing procedures set forth below apply to highly sensitive documents

(HSDs).

- a. A document is an HSD if its subject matter renders it of potential value to malicious nation-state actors seeking to harm the interests of the United States. Factors to be considered in making the determination include whether the document involves matters of national security; foreign sovereign interests; cybersecurity; intellectual property or trade secrets; terrorism; public officials; or the reputational interests of the United States. In making such a determination the court will consider the extent of the domestic or international interests that are implicated.
- b. The following types of documents generally are not considered HSDs: Presentence reports, pretrial release reports, pleadings related to cooperation in criminal cases, social security records, administrative immigration records, and sealed filings in civil cases.
- c. 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 an HSD

- a. In order to have a document filed as an HSD, a party must 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.

- b. The required documents shall be submitted nonelectronically to the clerk's office in a sealed envelope marked "HIGHLY SENSITIVE DOCUMENT." Documents shall not be stapled or folded. The outside of the envelope shall be affixed with a copy of the HSD's caption page (with confidential information redacted).
- c. If required, 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).
- d. Upon receipt, the clerk's office will make an informational entry on the case docket indicating that an HSD motion was received and delivered to chambers.
- e. 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 format outside of the court's electronic filing system.

f. If the motion is denied, the filing party is responsible for filing the document under existing procedures set forth in the Court's Local Rules and the Guide for Filing in the District of Montana. An informational entry will be made on the case docket indicating that the motion and order denying the HSD have been filed and will be maintained in a secure format outside of the court's electronic filing system.

3. Service of Highly Sensitive Court Orders

- a. 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 format outside of the court's electronic filing system and will serve paper copies of the order on the parties via mail.
- b. An informational entry will be made on the case docket indicating that the HSD order has been filed and will be maintained in a secure format outside of the court's electronic filing system.

4. 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 in a secure format outside of the court's electronic filing system.

- b. A party's motion to remove an HSD or highly sensitive case from the court's electronic filing system shall be filed nonelectronically and must explain why such document or case is highly sensitive under the criteria set out in paragraph 1 above or why it should otherwise be subject to the heightened protection for HSDs.
- c. An informational entry will be made on the case docket indicating that the motion has been filed and will be maintained in a secure format outside of the court's electronic filing system.

5. Questions about HSD Filing Procedures

Any questions about how an HSD should be filed with the court pursuant to this Standing Order should be directed to the clerk's office.

Dated this 12th day of January, 2021.



Brian Morris, Chief Judge
United States District Court