

**DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISIONS OF ST. CROIX AND ST. THOMAS/ST. JOHN**

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IN RE:)
PROCEDURES FOR THE FILING,) **Miscellaneous No. 2021- 12**
SERVICE, AND MANAGEMENT OF)
HIGHLY SENSITIVE DOCUMENTS)
_____)

GENERAL ORDER

WHEREAS, in response to recent disclosures of wide-spread breaches of both private sector and government computer systems, federal courts are adding new security procedures to protect highly sensitive documents (“HSDs”) filed with the courts;

THE COURT FINDS that, pursuant to Federal Rule of Civil Procedure 5(d)(3)(A) and Federal Rule of Criminal Procedure 49(b)(3)(A), good cause exists to require the filing of 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 highly sensitive documents shall be subject to the procedures and requirements set forth herein. This General Order supersedes any and all inconsistent provisions in existing Local Rules or other General Orders of this Court.

- 1. General Definition of HSDs:** HSDs are documents that contain highly sensitive information (“HSI”) that is likely to be of interest to the intelligence service of a hostile, foreign government and whose use or disclosure by such government would likely cause significant harm. HSDs also include documents with HSI whose disclosure could jeopardize the safety of specific individuals. The standard for designating a document as an HSD is higher than the standard for filing a document under seal. Very few documents that may be routinely filed under seal will contain HSI or be considered HSDs.

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2. Documents Subject to this Order

a. Authorized HSDs: The following types of documents are deemed HSDs:

- i. Applications for interception of wire, oral or electronic communications pursuant to 18 U.S.C. § 2518, and related documents; and
- ii. All Orders granting, authorizing or denying the aforementioned documents.

A party seeking to file an authorized HSD need not make a motion to treat the document as an HSD. The HSD shall be filed in accordance with the procedures set forth in Section 3 of this Order.

b. Documents That May be Considered HSDs: Documents containing the following types of information may be considered HSDs:

- i. national security;
- ii. foreign sovereign interests;
- iii. cybersecurity;
- iv. highly sensitive domestic or international issues;
- v. ongoing law enforcement investigations or intelligence gathering operations;
- vi. information that would put at risk the safety of public officials, other specific individuals, or the integrity of government operations; and
- vii. non-public intellectual property, including trade secrets.

A party seeking HSD designation for a document shall file a motion requesting that the document be treated as an HSD, in accordance with the procedures set forth in Section 4 of this Order. The party's motion shall explain why such document is highly sensitive or why it should otherwise be subject to the heightened protection for HSDs. Any dispute as to whether a document is an HSD shall be resolved by the presiding judge, or the Chief Judge if the case has not been assigned.

c. Documents That Are Generally Not HSDs: The following types of documents generally are not considered HSDs:

- i. sealed criminal complaints, indictments, and informations;
- ii. search warrants;
- iii. presentence reports, pretrial release reports, and related documents;
- iv. pleadings related to cooperation in most criminal cases;
- v. social security records;
- vi. administrative immigration records; and
- vii. sealed filings in most civil cases.

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The fact that a document qualifies for filing under seal does not mean that it satisfies the criteria for HSD designation. Documents will not be considered HSDs solely because they include personal identifying information, medical records or information, or financial information about an entity or individual. Most sealed filings in criminal and civil cases do not constitute HSDs.

3. Filing of Authorized HSDs

- a. A party filing an authorized HSD pursuant to this Order shall submit to the Clerk's Office two paper copies of the authorized HSD, the certificate of service, and any additional copies as determined by the Clerk's Office.
- b. The required documents shall be submitted to the Clerk's Office unfolded and in a sealed envelope marked "HIGHLY SENSITIVE DOCUMENT." The outside of the envelope shall include the case number, if applicable, and the presiding judge or, if one is not assigned, the Chief Judge.

The Clerk's Office will make an informational docket entry in the Court's electronic filing system indicating that the authorized HSD was filed with the Court and will maintain the HSD in a secure paper filing system or a secure standalone computer system that is not connected to any network.

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

- a. Represented Parties
 - i. Unless deemed an authorized HSD pursuant to Section 2.a. of this Order, a represented party, including the Government, shall file a motion to treat a document as an HSD on the Court's electronic filing system. A copy of the proposed HSD shall not be filed electronically.
 - ii. The party seeking to file a document as an HSD shall deliver two paper copies of the following documents, packaged as specified in Section 3.b. of this Order, directly to the Clerk's Office, without electronically filing the same:
 1. the proposed HSD;
 2. a supporting affidavit or, if appropriate, a memorandum of law, setting forth the reasons why the document should be treated as an HSD or why it should otherwise be subject to the heightened protection for HSDs, as described in Section 2.b. of this Order, and citing the event that would bring the heightened protection status to an end;
 3. a proposed order granting the motion to file the document as an HSD; and
 4. a certificate of service.

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- iii. When service on other parties is required, the filing party shall serve the proposed HSD as follows:
 1. 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
 2. Criminal Cases – by any manner specified in Fed. R. Crim. P. 49(a)(3)(B) or (a)(4).
- iv. The Court will issue an Order on the motion. If the Court determines that the Order contains HSI, the Clerk’s Office will docket and maintain the Order in a secure paper filing system or a standalone computer system that is not connected to any network. The Clerk’s Office will make an informational docket entry in the Court’s electronic filing system indicating that a Court Order has been entered. If the Court’s Order does not contain HSI, it will be filed on the Court’s electronic filing system.

5. *Pro se* parties

- a. *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. These documents should be packaged as specified in Section 3.b. of this Order.
- b. When service on other parties is required, the filing party shall serve the proposed HSD on the other parties as specified in Section 4.a.iii. of this Order.
- c. The Court will issue an Order on the motion. If the Court determines that the Order contains HSI, the Clerk’s Office will maintain the Order in a secure paper filing system or a standalone computer system that is not connected to any network. The Clerk’s Office will make an informational docket entry in the Court’s electronic filing system indicating that a Court Order has been entered. If the Court’s Order does not contain HSI, it will be filed on the Court’s electronic filing system.

6. Service of Highly Sensitive Court Orders

- a. If the Court grants an application to treat a document as an HSD, and the Court determines that the Order contains HSI, the Clerk’s Office shall serve paper copies of the Order on the parties via hand-delivery or mail.

7. Retention of HSDs

- a. The Court shall maintain all HSDs in a secure paper filing system in accordance with the judiciary policy for records disposition. If the Court denies an application for a document to be treated as an HSD, the document and accompanying submissions will not be considered as filed with the Court for any purpose other than for consideration as an HSD. When filing is required, the party shall file the document pursuant to the Federal and Local Rules of Procedure.

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8. 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 document, case, or any portion thereof, 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 or a 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 or why it should otherwise be subject to the heightened protection for HSDs, as described in Sections 2.a. or 2.b. of this Order,

9. Return of an HSD Document to CM/ECF

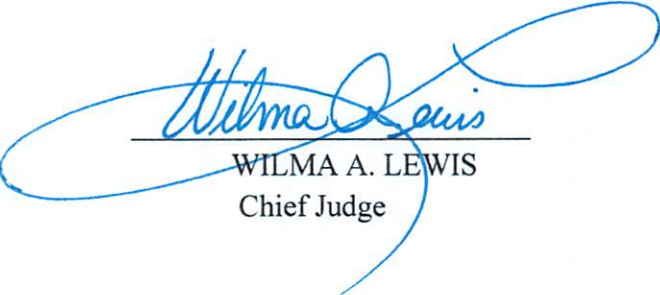
- a. A party may file a motion seeking to end or extend HSD status.
- b. HSDs and related documents will become public in the same manner as documents previously subject to sealing on CM/ECF.
- c. When an HSD is to be made public, the Clerk's Office will add the document to the Court's electronic docket.

10. Sealed Filing Procedures

This General Order does not change any procedures for filing documents under seal that are considered sensitive or confidential but do not meet the definition of an HSD and are filed in civil or criminal matters.

SO ORDERED.

Date: February 3 2021



WILMA A. LEWIS
Chief Judge