

In the United States Court of Federal Claims

GENERAL ORDER No. 2024-01

Procedures for the Requesting, Filing, and Management of Highly Sensitive Documents

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 filing system. The court finds that pursuant to Rule 5(d)(3)(A) of the Rules of the United States Court of Federal Claims (RCFC), good cause exists to permit nonelectronic filing of HSDs as defined herein.

Therefore, effective immediately and until further order of the court,

IT IS ORDERED that HSDs will be filed and served in paper form (or, if digital media, on a secure electronic device, such as a flash drive), in accordance with this General Order, and will be maintained by the clerk's office in a secure filing system that is separate from the court's electronic filing system.¹ This General Order supersedes any and all prior court orders concerning HSDs.

1. Documents and Materials Subject to this General Order

(a) Definition. An 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 way. Although frequently related to law enforcement materials, especially sensitive information in a civil case could also qualify for HSD treatment.

¹ This General Order does not apply to classified information. For more information on cases involving classified information, please visit <https://www.uscfc.uscourts.gov/filing-a-complaint>.

- (i) **Examples of HSDs:** Examples of HSDs include *ex parte* sealed filings relating to: national security investigations, cyber investigations, and especially sensitive public corruption investigations; and 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. The fact that a document may contain sensitive, proprietary, confidential, personally identifying, medical, or financial information about an entity or an individual, that may justify sealing of the document, does not alone qualify the document as an HSD.
- (b) HSDs vary in their physical form and characteristics. They may be paper, electronic, audiovisual, microform, or other media. The term “document” includes all recorded information, regardless of its physical form or characteristics.
- (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. In determining whether a document meets the HSD definition, the court shall consider properly articulated concerns that the unauthorized access or disclosure of the information contained in the document at issue would result in significant adverse consequences that outweigh the administrative burden of handling the document as an HSD. If relevant, the court has the discretion to consider the impact of the heightened protection provided by offline placement to any other party’s right of access.

2. Requesting HSD Designation

- (a) A party seeking to file an HSD must, before such filing,

seek leave of the court for such filing in the manner provided in paragraph 2(b).

- (i) A request for HSD designation must be accompanied by a certification of the movant's good-faith belief that the material meets the HSD definition.
 - (ii) The requesting party must articulate why HSD treatment is warranted, including, as appropriate: the contents of the document; the nature of the investigation or litigation; and 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.
 - (iii) The requesting party must include a proposed order that provides the information stated in paragraph 3 below.
 - (iv) The requesting party shall serve the proposed HSD on the other parties by any manner specified in RCFC 5(b)(2), except for service via the court's electronic filing system.
- (b) The request and the proposed HSD 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 any proposed highly sensitive information redacted).

3. Order Granting HSD Designation

An order granting a motion seeking HSD designation, or directing the filing of a document as an HSD on the court's own motion, must:

- (a) State the identity of the persons who are to have access to the documents without further order of the court; and
- (b) Set forth instructions for the duration of HSD treatment. HSDs are stored temporarily or permanently offline as the situation requires. When designating a document as an HSD, the court shall indicate when the designation will automatically lapse or when the designation will be revisited by the judicial officer. HSDs will be migrated as sealed documents to the court's electronic filing system and unsealed, as appropriate, as soon as the situation allows.

4. Filing an HSD

- (a) A copy of the order granting HSD designation must be included with any document filed as an HSD.
- (b) The clerk's office will maintain the HSD in a secure filing system that is separate from the court's electronic filing system.
- (c) 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. The docket entry shall not include personal or other identifying details related to or contained within the HSD. For example:

*NOTICE OF HIGHLY SENSITIVE DOCUMENT:
re [ECF No.] [title of document] maintained outside the court's
electronic filing system.*

- (d) Unless otherwise ordered by the court, within seven (7) days of filing the HSD, the filing party shall file a copy of the HSD in the court's electronic filing system, with the highly sensitive information redacted.
- (e) If the court determines that a court order contains information reflected in an HSD, the clerk's office will make an informational docket entry in the court's electronic filing system indicating that the order was filed, will maintain the order in a secure filing system that is separate from the court's electronic filing system, and will serve paper copies of the order on the parties via mail. Within seven (7) days, the presiding judge will file a copy of the order in the court's electronic filing system, with any information from an HSD redacted.
- (f) An HSD in the lower court's record ordinarily will also be regarded by an appellate court as an HSD.

5. Safeguarding Internal Communication

Care shall also be taken in internal court communications regarding HSDs, including notes and pre-decisional materials, not to include the protected substance of HSDs in any communication using the internet or a computer connected to a network.

6. Secure Electronic Device

Unless filing an HSD in paper form, the filing party must use the following protections:

- (a) an encrypted electronic storage device that meets Federal

- Information Processing Standard (FIPS) 140-2;
- (b) a personal identification number (PIN); and
 - (c) a mechanism that deletes the data in the HSD after more than ten (10) failed attempts to access it.

The required access PIN must be communicated to the clerk's office separately via other secure means such as an encrypted e-mail or secure paper mail. The filing party must contact the clerk's office in advance of filing an HSD.

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 (202) 357-6406. For more information on cases involving highly sensitive documents, please visit <https://www.uscfc.uscourts.gov/node/3274>.

IT IS SO ORDERED.

s/Elaine D. Kaplan
ELAINE D. KAPLAN
Chief Judge

May 30, 2024
Washington, D.C.