

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA**

**IN RE: PROCEDURES FOR THE FILING, )  
SERVICE, AND MANAGEMENT OF HIGHLY ) STANDING ORDER  
SENSITIVE DOCUMENTS )**

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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.

It is **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 Standing Order supersedes any and all inconsistent provisions in existing local rules, administrative policies, or other standing or administrative order of this Court.

**I. 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):

1. Applications for search warrants;
2. Applications for mobile tracking devices under 18 U.S.C. § 3117;
3. Applications for pen registers or trap and trace devices under 18 U.S.C. § 3127(3) &(4);
4. Applications for prospective or “real time” cellular site data under 18 U.S.C. § 3121;
5. Applications to disclose stored electronic communications under 18 U.S.C. § 2703(a), (b), and (c);
6. Applications for electronic surveillance under 18 U.S.C. § 2518;
7. Applications for anticipatory search warrants based on United States v. Grubbs, 547 U.S. 90 (2006); and
8. all affidavits, warrants, orders, motions, and other documents filed in relation to such applications.

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. In determining whether a document is an HSD, factors to be considered may include whether the case involves matters of national security, foreign sovereign interests, 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.

## **II. Filing of Authorized HSDs**

- A. A party filing an HSD pursuant to a court order or applicable law **MUST** submit to the clerk's office or a judicial chamber, if so directed by a judicial officer, in paper form, the HSD, the certificate of service, and, if applicable, a copy of the court order authorizing the treatment of that document as highly sensitive.
- B. The required documents **MUST** be submitted to the clerk's office in a sealed envelope marked "**HIGHLY SENSITIVE DOCUMENT.**" The outside of the envelope must include the case caption, with confidential information redacted, and the case number, if available.
- C. The filing party shall serve the HSD on the other parties as follows:
  - 1. Civil cases - by any manner specified in Civil Rule 5(b)(2), except for service via the court's electronic filing system; or
  - 2. Criminal cases - by any manner specified in Criminal Rule 49(a)(4).
- D. 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 paper filing system.

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

- A. A party **MUST** file a motion to treat a document as an HSD by submitting to the clerk's office, in paper form, the motion, the memorandum in support of motion, a copy of the proposed HSD, and the certificate of service. The motion and memorandum must explain why the proposed document constitutes an HSD under the criteria set out in Section I above or why it should otherwise be subject to the heightened protection for HSDs. The clerk's office will make an information docket entry in the court's electronic filing system indicating the motion was filed and will maintain the documents in a secure paper filing system.
- B. These documents should be packaged as specified in Section II(B).

- C. The filing party shall serve the documents on the other parties as specified in Section II(C).
- D. A response or reply to the motion must be filed as specified in Section III(A - C).
- E. The court will issue an order on the motion and, an informational entry will be made on the case docket indicating that the order has been filed. If the order grants the motion a separate informational entry will be made to indicate the HSD has been filed with the court. The clerk's office will maintain the Court's order and the HSD in a secure paper filing system.

**IV. 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 paper filing system and will serve paper copies of the order on the parties via mail.

**V. 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 paper filing system.
- 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 Section I above or why it should otherwise be subject to the heightened protection for HSDs.

**VI. 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 at:

Bismarck: 701-530-2300                      or                      Fargo 701-297-7000

**IT IS SO ORDERED**, this 12<sup>th</sup> day of January, 2021.

          /s/ Peter D. Welte            
Peter D. Welte, Chief Judge  
United States District Court