

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

In Re: Procedures for the Filing, Service and
Management of Highly Sensitive Documents

ADMINISTRATIVE ORDER 380

In response to breaches of private and government computer systems, including an apparent compromise of the U.S. Courts' CM/ECF electronic filing system, the Judicial Conference of the United States has directed all federal courts to issue new security procedures for materials that contain highly sensitive information. Pursuant to Rule 5(d)(3)(A) of the Federal Rules of Civil Procedure and Rule 49(b)(3)(A) of the Federal Rules of Criminal Procedure, the court finds good cause to require parties to file certain highly sensitive documents outside of CM/ECF.

This order defines "highly sensitive documents" (HSDs) and establishes the procedures that apply to the filing and service of HSDs in cases in the Western District of Wisconsin.

A. Highly Sensitive Documents defined

1. Documents designated as HSDs without court order

Any of the following documents is deemed an HSD if it contains information that, if disclosed, would undermine an active criminal investigation, pose an extreme risk to the safety of a person, or cause significant economic damage to a person or entity, without a further court order:

1. Search warrants and related applications;
2. Applications for electronic surveillance under 18 U.S.C. § 2518;
3. Applications for stored electronic communications under 18 U.S.C. § 2703(d);

4. Applications for non-disclosure of grand jury subpoenas under 18 U.S.C. § 2705;
5. Sealed charging documents; and
6. Sealed arrest warrants.

2. Documents designated as HSDs by order of the presiding judge

A party may request of the presiding judge that a document not specified in the categories above be deemed an HSD if it contains information that, if disclosed, would undermine an active criminal investigation, pose an extreme risk to the safety of a person, or cause significant economic damage to a person or entity.

HSD designation will not be afforded to all documents that qualify for filing under seal.

The following are presumptively not HSDs:

1. Presentence reports, pretrial release reports, and probation violation reports;
2. Pleadings in criminal cases related to substantial assistance or past cooperation;
3. Social security records; administrative immigration records; and qui tam complaints;
4. Commercial or proprietary information.

A request for HSD designation must be made by motion. The motion itself may be filed through CM/ECF, but it must not disclose the highly sensitive content. The proposed HSD itself must be promptly submitted to the court on paper and, if required to be served, served on the other parties in a manner that preserves the confidentiality of the material. If the court denies the motion for HSD designation, the filing party will be required to file the document through CM/ECF without delay.

B. Filing of Highly Sensitive Documents

Effective immediately, and until the court orders otherwise, HSDs and proposed HSDs

must be submitted to the court on paper *only*. HSDs, if required to be served, must be served on the other parties in a manner that preserves the confidentiality of the material.

C. Previously filed documents

The court will not of its own accord identify or remove any previously filed HSDs from CM/ECF.

A party, by motion, request that the presiding judge designate a previously filed document to be an HSD if the document merits HSD designation as provided in this order. If the motion is granted, the HSD will be removed from CM/ECF and maintained in paper until the case is closed. The moving party is responsible for maintaining a copy of the HSD for purposes of appeal.

This order amends Administrative Order No. 375.

Entered March 26, 2021.

BY THE COURT:

/s/

JAMES D. PETERSON
Chief District Judge