UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

Re: Procedures for the   Administrative Order
Filing, Service, and Management
of Highly Sensitive Documents   21-AO-003

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) to be filed with the courts.

The Court finds that, under Federal Rule of Civil Procedure 5(d)(3)(A) and Federal Rule of Criminal Procedure 49(b)(3)(A), good cause exists to require all parties to file certain HSDs outside of the court's electronic filing system.

Therefore, it is ORDERED that, effective today 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 Administrative Order supersedes any and all inconsistent provisions in existing local rules or other administrative orders of this Court.

1. **Documents Subject to this Order**
   a.   A party may ask the Court to designate a paper as an HSD by filing a motion under the procedures outlined below. If the Court does not designate a paper an HSD, it may not be filed outside of the court's electronic filing system. If the Court designates a paper an HSD, it must be filed under the procedures set forth in this Administrative Order.

   b.   HSDs include only those documents that contain highly sensitive information, defined as information that could readily be used to harm or compromise the interests of the United States or any of its agencies. Factors to consider in determining which documents should be deemed HSDs include whether the case involves matters of national security, foreign sovereign interests, or cybersecurity; the extent of domestic or international security interests; the involvement of public officials; the reputational interests of the United States or its agencies; and the extent to which unauthorized access could jeopardize an ongoing investigation or the safety of an individual.

   c.   In its motion to designate the filing an HSD, the filing party must state the basis on which it asserts the document to be filed is an HSD and, in particular, shall show how disclosure of highly sensitive information in the document could readily be used to harm or compromise the interests of the United States or any of its agencies.

d.   Documents that may be deemed HSDs include the following, if they meet the criteria listed above: Applications for interception of wire, oral or electronic communications under 18 U.S.C. § 2518; indictments filed under seal that are not expected to be unsealed in the near future; and filings governed by the Classified Information Procedures Act of 1980, *see* 18 U.S.C. App. 3.

e.   The following types of documents generally are not considered HSDs: Presentence reports, pretrial release reports, papers related to cooperation in most criminal cases, most search warrant applications, Social Security records, administrative immigration records, sealed filings in many civil cases, documents a party marked "confidential" under a protective order, and medical records.

Any dispute as to whether a document is an HSD shall be resolved by the assigned judge or, when no judge is assigned, the chief judge.

2. Motions to Treat a Paper as an HSD

To request the Court to designate a paper an HSD, a party must submit an original and one copy of the following to the Clerk's Office:

a.   a motion to treat a paper as an HSD; and

b.   the proposed HSD unfolded, in a securely sealed envelope and marked "HIGHLY SENSITIVE DOCUMENT" in accordance with Local Rule 83.31(a)(3)(B). The outside of the envelope shall be affixed with a copy of the case's caption page (with confidential information redacted).

Except where the law permits the filing of an *ex parte* motion, the party must observe the procedures set forth in Local Rule 7.1, except that the above-referenced documents shall not be filed electronically. No courtesy copies of the motion or documents should be submitted to the assigned judge's chambers.

3. Determination

a.   The Clerk will notify the assigned judge immediately that a motion to designate a filing as an HSD has been submitted and deliver to chambers the motion and related papers.

b.   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.

c.   If the court determines that a court order contains highly sensitive information, the clerk's office will file and maintain the order under seal in a secure

paper filing system or a secure standalone computer system that is not connected to any network and will serve paper copies of the order on the parties via mail.

4. **Service of Highly Sensitive Documents**
Except where the law permits the filing of an *ex parte* motion, the filing party shall serve the HSD on the other parties as follows:

a.   Civil cases - by any manner specified in Civil Rule 5(b)(2), except for service via the court's electronic filing system; or

b.   Criminal cases - by any manner specified in Criminal Rule 49(a)(3)(B) or (a)(4).

5. **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 under seal in a secure paper filing system or a secure 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 must explain why such document or case is highly sensitive under the criteria set out in paragraph 1.b. above or why it should otherwise be subject to the heightened protection for HSDs. The motion shall be submitted under the procedures set forth in paragraph 2 above.

6. **Questions about HSD Filing Procedures**
Any questions about how an HSD should be filed with the court pursuant to this Administrative Order should be directed to the clerk's office at (313) 234-5005.

IT IS ORDERED.

FOR THE COURT:

S/Denise Page Hood
Denise Page Hood
Chief Judge