



URGENT NOTICE

Highly Sensitive Documents May Not Be Filed on CM/ECF

January 8, 2021

Recent disclosures of widespread cybersecurity breaches of government computer systems have prompted the federal courts to add new security procedures to protect highly sensitive documents filed with the courts. Effective January 8, 2021, highly sensitive documents (“HSDs”) may no longer be filed under seal in the Court’s CM/ECF system.

Not all sealed documents on CM/ECF qualify as HSDs, which are a subset of currently sealed court filings. HSDs will be accepted for filing in paper format during business hours at the Clerk’s Office in the E. Barrett Prettyman Courthouse, and will not be uploaded to CM/ECF, though a record of filing will be placed on the CM/ECF docket. This new practice does not alter current policy regarding public access to court records, since sealed records are confidential and generally not available to the public.

Civil Cases: In civil cases, parties should determine prior to filing whether a document is “highly sensitive,” *e.g.*, contains closely held trade secrets, confidential government enforcement information or similarly sensitive information, and therefore should not be filed on CM/ECF. Conversely, social security records, administrative immigration records, and many sealed civil filings are not HSDs. To file an HSD in a civil case, the party must include the request and justification for treatment as an HSD in the motion to seal, and submit the motion, with attached HSD sought to be sealed as such, in paper, in compliance with D.D.C. Local Civil Rule 5.1(h)(2) and 5.4(e)(1). Whether a document is an HSD shall be resolved by the presiding Judge or, when no Judge is assigned, the Chief Judge.

Criminal Investigative Matters and Cases: Sealed applications for communications interception, under 18 U.S.C. § 2518, and sealed applications for electronic and physical search warrants, under 18 U.S.C. § 2703 and Fed. R. Crim. P. 41, and related documents, are considered HSDs. For other types of sealed investigative applications, and documents in criminal cases, the government (or other filer) should determine whether a document is “highly sensitive” and file such document accordingly. In general, pretrial service reports, presentence investigation reports, and cooperation agreements are not HSDs and should still be filed, under seal, on CM/ECF. To file an HSD in a criminal investigative matter or case, the government (or other filer) must include the request and justification for treatment as an HSD in the motion to seal, and submit the motion, with attached HSD sought to be sealed as such, in paper, in compliance with D.D.C. Local Criminal Rule 49(e)(1), (f)(6)(ii). Whether a document is an HSD shall be resolved by the presiding Judge or, when no Judge is assigned, the Chief Judge.

For more information, please see: https://www.uscourts.gov/news/2021/01/06/judiciary-addresses-cybersecurity-breach-extra-safeguards-protect-sensitive-court?utm_campaign=usc-news&utm_medium=email&utm_source=govdelivery