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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**IN RE: PROCESS FOR PUBLIC DOCKETING
OF UNSEALED, REDACTED GOVERNMENT
INVESTIGATIVE APPLICATIONS AND
RELATED ORDERS AND MATERIAL**

Standing Order No. 22-05 (BAH)

Chief Judge Beryl A. Howell

ORDER

This Standing Order establishes uniform procedures for the public docketing of unsealed, redacted applications for warrants and orders filed by the U.S. Attorney’s Office for the District of Columbia (“USAO”) and components of the U.S. Department of Justice (“DOJ”), pursuant to the Stored Communications Act (“SCA”), 18 U.S.C. §§ 2703(a), (c) & (d); the Pen Register Act (“PRA”), 18 U.S.C. § 3123; and such SCA and PRA records prompted by the request of foreign governments under Mutual Legal Assistance Treaties and agreements (“MLATs”), 18 U.S.C. § 3512; and related materials (collectively, “Subject Criminal Investigative Records”), to comply with the directives of this Court and the D.C. Circuit in *In re Leopold*, No. 13-mc-712 (BAH).

I. BACKGROUND

1. The D.C. Circuit, in *In re Leopold* (“*Leopold*”), 964 F.3d 1121 (D.C. Cir. 2020), affirmed this Court’s holding that the sealed Subject Criminal Investigative Records at issue were judicial records, for which unsealing decisions were governed by the six-factor test of *United States v. Hubbard*, 650 F.2d 293 (D.C. Cir. 1980). *Leopold*, 964 F.3d at 1130. Based on its construction of the statutory authorities implicated, the Circuit further concluded that a strong presumption of public access applies to SCA warrants and § 2703(d) orders but not to pen register and trap and trace (“PR/TT”) orders. *See id.* at 1130–31 (“[W]ith respect to SCA

materials, . . . Congress displaced neither the common-law presumption of access nor the *Hubbard* test for making unsealing decisions [and] [w]ith respect to pen register orders, . . . Congress did displace the presumption, but did not displace the *Hubbard* test as the standard for unsealing. Therefore, when faced with a request to unseal either kind of material, the district court should apply the traditional *Hubbard* balancing test—albeit without a thumb on the scale in the case of pen register orders.”).

2. Critically, the D.C. Circuit rejected this Court’s view that “[w]here the type of record sought to be unsealed requires careful review prior to unsealing to ensure that information properly retained under seal is not disclosed, and where the volume of the materials sought [to] be unsealed amplifies the burden that undertaking such review will impose on a party and/or the Court, *Hubbard* properly allows a court to cognize such burden in weighing a motion to unseal.” *In re Leopold*, 327 F. Supp. 3d 1, 25 (D.D.C. 2018) (citing *Hubbard*, 650 F.2d at 323), *rev’d*, 964 F.3d 1121. Instead, the Circuit reasoned that “although administrative burden is relevant to how and when documents are released, it does not justify precluding release forever,” and no matter how time-consuming production may be, “time-consuming is not the same thing as impossible.” *Leopold*, 964 F.3d at 1133.
3. Accordingly, the D.C. Circuit held that “the burden of producing judicial records may not permanently foreclose their unsealing,” *id.* at 1134, and remanded for this Court to supplement the “important steps” already taken “to increase the transparency of filings related to the electronic surveillance orders at issue” and “to determine, in its sound discretion, how and when greater access can be provided,” *id.* at 1135. *See also In re*

Leopold, No. 20-mc-95, 2020 WL 7264050, at *2–5 (D.D.C. Dec. 10, 2020) (summarizing the relevant history).

4. As a reminder of what the D.C. Circuit found insufficient, this Court had developed a workable solution, detailed *infra* in (a)-(c), to provide prompt public access to both retrospective and prospective docket information for sealed Subject Criminal Investigative Records.

(a) On a retrospective basis, the Court “provided an unprecedented level of transparency into the process of judicial review of the USAO’s use of PR/TT and SCA authorities to collect evidence in criminal investigations,” *In re Leopold*, 300 F. Supp. 3d 61, 100 (D.D.C. 2018), *reconsideration denied*, 327 F. Supp. 3d 1, *rev’d*, 964 F.3d 1121, by unsealing “(1) the total numbers of USAO-filed PR/TT during the period of 2008 through 2016;¹ (2) the total numbers of SCA § 2703(d) and warrant matters, retrieved using certain search criteria, filed by the USAO and DOJ components during this period; (3) certain docket information concerning PR/TT matters the USAO initiated during this period; (4) over 100 pages of redacted documents from four representative sample PR/TT matters from 2012; and (5) fifteen categories of extracted information from a representative sample of ten percent of USAO-filed PR/TT matters from 2012,” *id.*

¹ See Order & Notice to the Parties, *In re Leopold*, No. 13-mc-712 (D.D.C. Sept. 21, 2016, Feb. 22, 2017, and Apr. 24, 2017), ECF Nos. 22, 32, and 37 (providing annual totals); Order and Notice, *In re Disclosure of Pen Registers from January 1, 2017 through September 30, 2017*, No. 18-mc-61 (D.D.C. Apr. 30, 2018), ECF No. 1; Standing Order No. 18-46, *Disclosure of Limited Docket Lists for Certain Sealed Appls. Filed by USAO-DC* (D.D.C. Oct. 2, 2018).

(b) On a prospective basis, the Clerk’s Office and both the USAO and DOJ adopted administrative and operational changes in processing sealed Subject Criminal Investigative Records to permit such applications to be filed by the government electronically, pursuant to Memoranda of Understanding (“MOUs”) with the Clerk’s Office, *see* D.D.C. LCRR 49(e)(4), using a standardized format for case captions that contained no personally identifying information but, depending on the type of application, included pertinent information about: “(1) the number of target telephone lines, subscriber accounts, and/or devices that are the application’s subject or subjects; (2) the type of target or targets (*e.g.*, a landline, cellular, or mobile telephone; email account; cell tower; or other facility or device) subject to the application; (3) the service provider to which the order would be directed; and (4) the primary offense statute(s) under investigation.” *Id.* at 104; *see also In re Leopold*, No. 13-mc-712, 2020 WL 7481037, at *2 (D.D.C. Dec. 17, 2020).²

(c) Further, twice-yearly docket reports—which remain publicly available—were issued, between October 2, 2018 and October 8, 2020, about various types of sealed criminal investigative matters filed in this Court by both the USAO and DOJ, twelve through six months prior to each report's publication (collectively, covering matters filed between April 1, 2018 and March 31, 2020), which reports provide information about the total numbers of such matters and, as reflected in the standardized caption for

² The referenced MOUs are available on the Court’s website. *See MOUs—Electronic Filing of Sealed Applications and Orders*, U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, <https://www.dcd.uscourts.gov/mous-electronic-filing-sealed-applications-and-orders> (last visited Jan. 21, 2022).

each matter, the number and type of target accounts (*e.g.*, landline telephone, cellular telephone, and/or email), the service providers' names, and the primary offense statutes under investigation.³

5. This solution for providing limited transparency as to the nature of the sealed dockets for criminal investigative matters, while avoiding the administrative burden of undertaking the time-consuming and meticulous process of unsealing appropriately redacted documents contained in those sealed dockets, was rejected by the D.C. Circuit as inadequate because docket "reports are not the court dockets themselves and do not indicate whether an application for a warrant or order was granted or denied." *Leopold*, 964 F.3d at 1132. Consequently, with agreement of the parties in *In re Leopold*, No. 13-mc-712, the mechanism used by this Court for several years to provide limited transparency regarding the sealed dockets for sealed criminal investigative applications filed in this Court by both the USAO and DOJ under the SCA, the PRA, or pursuant to mutual legal assistance treaties and agreements, through the twice-yearly generation of unsealed docket information for these records, was discontinued. *See* 2020 WL 7481037, at *2 n.2.
6. This Court, on remand, broadly outlined one possible method of operationalizing the Circuit's expansive unsealing mandate in *Leopold* as follows: "unsealing will require the government to file redacted versions of any documents containing personally identifiable information filed on a given docket, and then to file a motion to unseal the case docket

³ *See Standing Orders Regarding Unsealing of Limited Docket Information for Sealed Applications*, U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, <https://www.dcd.uscourts.gov/news/standing-orders-regarding-unsealing-limited-docket-information-sealed-applications> (last visited Jan. 21, 2022).

indicating the matter is closed and identifying, by filed document number, the unredacted versions of the government-redacted documents to remain under seal. Once the motion is filed, the Clerk's Office will unseal the matter, thereby revealing for public access the docket entries with redacted versions of the sealed documents and keeping sealed only the specified unredacted original documents." *In re Leopold*, 2020 WL 7481037, at *3.⁴ As a practical matter, while conceptually straightforward, this possible method involved multiple steps by the USAO and DOJ, and the Clerk's Office, as well as an anticipated overwhelming number of proposed unsealing orders to be prepared and filed by the government and then reviewed and executed by a Judge or Magistrate Judge of this Court.⁵

7. This Court has identified and is now adopting an alternative, less burdensome procedure, as set forth below in Section II. This procedure aligns with the Clerk's Office standard docketing practices and accommodates technical limitations of the federal judiciary's Case

⁴ The Court has ordered that the government "redact the following information from the criminal investigative records to be unsealed: (1) individuals' names, except for the name of a judicial officer who has issued an order; (2) dates of birth; (3) Social Security numbers; (4) financial account numbers; (5) telephone numbers; (6) street addresses; (7) email account addresses; and (8) any other information that directly or indirectly identifies the target of, or witness, investigator, informant, or other person of interest in, a criminal investigation, and regardless of whether the investigation ultimately resulted in criminal charges or a criminal conviction." Memorandum Opinion and Order at 15–16, *In re Leopold*, No. 13-mc-712 (D.D.C. Feb. 9, 2021), ECF No. 71. In addition, the D.C. Circuit recognized that sealing—and thus, by extension, redactions—continue to be appropriate to "protect . . . law enforcement interests." *Leopold*, 964 F.3d at 1133.

⁵ Even before getting to the actual unsealing of the Subject Criminal Investigative Records, the government must undertake the critical work of accessing the sealed records, determining that the criminal investigation is closed and then redacting from each document, any personally identifiable information or sensitive law enforcement information. *See supra* n.4. The government has estimated "that there will be more than 10,000 documents *in 2020 alone* that will need to be redacted in compliance with the Court's order." Gov't's Status Report of Aug. 20, 2021, at 2 (D.D.C. Aug. 20, 2021), ECF No. 75 (emphasis added). The USAO has dedicated significant staffing and resources to this effort, including designating a full-time attorney to work on the project, "along with the assistance of a team of paralegals to help collect, catalog, review, redact, and make necessary filings." Gov't's Status Report of Oct. 20, 2021, at 3, *In re Leopold*, No. 13-mc-712 (D.D.C. Oct. 20, 2021), ECF No. 76. The government further contemplates "add[ing] new attorneys or paralegals to handle this workflow" as needed. Gov't's Status Report of Dec. 20, 2021, at 3 (D.D.C. Dec. 20, 2021), ECF No. 77.

Management/Electronic Case Filing (“CM/ECF”) system.⁶ First, once a case or matter has been opened on CM/ECF, the Clerk’s Office does not typically allow modifications or redactions to the case name, as the original filing is a court record. The case name is shown in the caption on the docket and repeated in the caption on each document filed in that docket. As a result, to the extent a docket’s caption contains personally identifying information (*e.g.*, email addresses or phone numbers of targeted accounts or names of persons under criminal investigation), unsealing the docket also reveals the private information in the caption, despite any efforts made to redact such personally identifying information from the text of the documents themselves. Second, CM/ECF does not offer a straightforward mechanism to *partially* unseal a docket. If a case is sealed in CM/ECF, all documents and docket entries, as well as the caption are sealed. To unseal some but not all entries on a sealed docket, the case as a whole, including the caption, must first be unsealed and the Court must then order specific documents and docket entries to remain sealed. *See* D.D.C. LCrR 49(f)(6)(i) (“Absent statutory authority, no case or document may be sealed

⁶ CM/ECF is an electronic filing system that allows attorneys “to open new civil cases, and file civil, criminal, and miscellaneous pleadings (including some sealed documents) electronically right from their office.” *Electronic Case Filing & Court Records*, U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, <http://www.dcd.uscourts.gov/ECFCR> (last visited Jan. 21, 2022). CM/ECF is used across the federal judiciary to manage dockets and filings electronically, *Electronic Filing (CM/ECF)*, U.S. COURTS, <http://www.uscourts.gov/courtrecords/electronic-filing-cmecf> (last visited Jan. 21, 2022), and to provide attorneys and the public “[c]ase information, including the docket sheet and the filed documents, . . . from locations other than the courthouse,” *FAQs: Case Management / Electronic Case Files (CM/ECF)*, U.S. COURTS, <http://www.uscourts.gov/courtrecords/electronic-filing-cmecf/faqs-case-management-electronic-case-files-cmecf> (last visited Jan. 21, 2022). This Court implemented CM/ECF for use in public civil cases in 2003, and in public criminal cases in 2005, but only began using CM/ECF for the docketing in sealed cases of sealed government applications and orders in criminal investigative matters in 2008. All such documents filed in sealed criminal investigative matters prior to 2008 would be in paper form only, to the extent still extant under applicable record retention policies. The *Leopold* parties agreed to limit unsealing of the sealed records at issue in sealed criminal investigative matters to those filed on CM/ECF. *In re Leopold*, 300 F. Supp. 3d at 78.

without an order from the Court.”). It is not possible in CM/ECF to unseal certain docket entries on a sealed docket without unsealing the caption.

8. The procedure set forth in Section II below establishes designated public dockets on CM/ECF for posting redacted versions of Subject Criminal Investigative Records, details the proper format for such filings and provides a blanket unsealing order for records filed in accordance with these procedures. This process, using master dockets and a blanket unsealing order, alleviates to a significant degree the burdens on the Clerk’s office and judicial officers that would otherwise ensue.

II. PROCEDURE

To streamline the administrative process and facilitate timely public access to unsealed, redacted Subject Criminal Investigative Records, it is hereby

ORDERED that, effective immediately, the Clerk of Court will establish publicly available master dockets for each category of judicial records covered by this Order, as follows:

1. Master dockets shall be established at the beginning of each calendar year for judicial records redacted and unsealed pursuant to this Standing Order in that calendar year.
2. For 2022, the master dockets shall be: **22-sc-9999** for judicial records relating to applications for warrants and orders filed, pursuant to SCA, 18 U.S.C. §§ 2703(a), (c) & (d), that are redacted and unsealed pursuant to this Order; **22-pr-9999** for judicial records relating to applications and orders, pursuant to the PRA, 18 U.S.C. § 3123, that are redacted and unsealed pursuant to this Order; and **22-ml-9999** for judicial records relating to such SCA and PRA applications for warrants and orders prompted by MLAT requests that are redacted and unsealed pursuant to this Order.

3. The master dockets in subsequent calendar years shall also be designated with that calendar year prefix and the 9999 number; and it is

FURTHER ORDERED that, effective immediately, the government, upon the closing of a criminal investigation involving Subject Criminal Investigative Records, shall prepare redacted versions of such Records, which shall be collated and attached as a single filing to a document titled: “**NOTICE OF FILING OF REDACTED DOCUMENTS IN RELATION TO [UNDERLYING SEALED CASE DOCKET NUMBER] UPON CLOSE OF INVESTIGATION.**” This **NOTICE** with the attached redacted judicial records shall be filed in the appropriate master docket as promptly as practicable after the closing of the investigation; and it is

FURTHER ORDERED that, upon the filing by the government of a **NOTICE** of filing of redacted documents, the redacted versions of the Subject Criminal Investigative Records from the underlying sealed matter shall be **UNSEALED**; and it is

FURTHER ORDERED that the master dockets and materials filed therein shall be available for review by the public.

SO ORDERED.

Date: January 25, 2022



Beryl A. Howell

BERYL A. HOWELL
Chief Judge