

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA

IN RE:)
)
REVISED PROCEDURES FOR) GENERAL ORDER 24-0003
REQUESTING, FILING, AND)
MANAGEMENT OF HIGHLY)
SENSITIVE DOCUMENTS)
)

On January 12, 2021, in response to disclosures of widespread breaches of both private sector and government computer systems, this Court entered General Order 21-0001 – Procedures for the Filing, Service, and Management of Highly Sensitive Documents. General Order 21-0001 adopted procedures for protecting documents containing highly sensitive material that require a greater level of security than that provided by electronically sealing such documents in the Court’s Case Management/Electronic Case Files (CM/ECF) System.

Federal courts are updating their security procedures to uniformly protect highly sensitive documents (HSDs), a narrow subset of sealed documents that must, for their protection, be stored outside the Court’s CM/ECF System.

The Court finds that good cause exists to permit nonelectronic filing of HSDs under Federal Rules of Bankruptcy Procedure 5005(a)(2)(A) and 7005 (the latter of which incorporates, *inter alia*, Federal Rule of Civil Procedure 5(d)(3)(A)).

Accordingly, IT IS HEREBY ORDERED that General Order 21-0001 is RESCINDED upon entry of this Order and shall be archived immediately.

IT IS FURTHER ORDERED that, effective as of the date of this order and until such time as the Court orders otherwise, the filing of HSDs shall be subject to the procedures and requirements set forth below. This General Order supersedes any and all inconsistent provisions in existing local rules or other general orders of this Court and any inconsistent procedures in the Court's CM/ECF Administrative Policies and Procedures Manual or other publications.

IT IS FURTHER ORDERED that, effective as of the date of this Order and until such time as the Court orders otherwise, notwithstanding their original form, HSDs will be filed and served: (i) in paper form or, (ii) only if the document cannot be filed in paper form, in digital media, on a secure electronic device, such as a flash drive, in accordance with this Order, and will be maintained by the Clerk’s Office in a secure paper filing system.

1. **Documents and Materials Subject to this Order**

- a. **Definition:** A Highly Sensitive Document (HSD) is a document or other material that contains sensitive, but unclassified, information that warrants exceptional handling and storage procedures to prevent significant consequences that could result if such information were obtained or disclosed in an unauthorized manner. Although frequently related to law enforcement materials, especially sensitive information in a bankruptcy case could also qualify for HSD treatment.

HSDs vary in their physical form and characteristics. They may be paper, electronic, audiovisual, microform, or other media. The term “document” includes all recorded information, regardless of its physical form or characteristics.

- i. **Examples of HSDs:** Examples include, but are not limited to, *ex parte* sealed filings relating to: national security investigations, cyber investigations, and especially sensitive public corruption investigations; and documents containing highly exploitable trade secrets, financial information, or computer source codes belonging to a private entity, the disclosure of which could have significant national or international repercussions.
- ii. **Exclusions:** Most materials currently filed under seal do not meet the definition of an HSD and do not merit the heightened protections afforded to HSDs. The form or nature of the document, by itself, does not determine whether HSD treatment is warranted. Instead, the focus is on the severity of the consequences for the parties or the public should the document be accessed without authorization. In a bankruptcy case, the following additional types of documents generally are not considered HSDs: debtor statements of Social Security Numbers; documents reporting settlements: discovery and evidence materials placed under seal; tax records; pay records; valuation reports; information about minors; documents related to domestic abuse; and settlement agreements.

2. Requesting HSD Designation

- a. A party requesting the Court to treat a document as an HSD shall file a Motion to Seal and include in that motion a request to treat the document as an HSD. The Motion to Seal shall:
 - i. Be accompanied by a certification of the movant's good faith belief that the material meets the HSD definition; and
 - ii. Articulate why HSD treatment is warranted, including, as appropriate: the contents of the document; the nature of the investigation or litigation; and the potential consequences to the parties, the public, or national interests, in the event the information contained in the document is accessed or disseminated without authorization.
- b. If the Court grants both the Motion to Seal and the request to treat the document as an HSD, the party shall tender to the Clerk's Office at the United States Courthouse in Indianapolis the HSD document, unfolded (if in paper form), in a sealed envelope marked "HIGHLY SENSITIVE DOCUMENT." The outside of the envelope shall have attached to it a copy of the Court's order directing treatment of the document as an HSD.
- c. The filing party shall serve the HSD on other parties as the Court directs in its order designating treatment as an HSD.
- d. The Clerk's Office will make an informational docket entry in the Court's CM/ECF System indicating that the HSD was filed with the Court. The docket entry shall not include personal or other identifying details related to or contained with the HSD.
- e. An opinion or order entered by the Court related to an HSD may itself constitute an HSD if it reveals sensitive information. If the Court determines that its order qualifies as an HSD, the Clerk's Office will file and maintain the order as an HSD and will serve paper copies of any filing issued by the Court.
- f. An HSD in another court's record will ordinarily be also regarded by this Court as an HSD.

3. **Removal of Existing HSDs from the Court's CM/ECF System**

- a. Upon the filing of a Motion for Authority by a party or upon its own motion, the Court may determine that a document or any portion thereof filed electronically is highly sensitive and direct that the HSD be removed from the CM/ECF system and maintained by the Clerk Office in a secure paper filing system.
- b. A party's Motion for Authority to designate and remove an HSD shall provide the information set forth within paragraphs 2(a)(i) and (ii) herein.
- c. If the Court determines that a document shall be treated as an HSD, the party that originally filed the document shall tender the HSD to the Clerk's Office in accordance with paragraph 2(b) above. Upon the entry of the Court's order, the Clerk's Office shall remove the HSD from the Court's CM/ECF system.

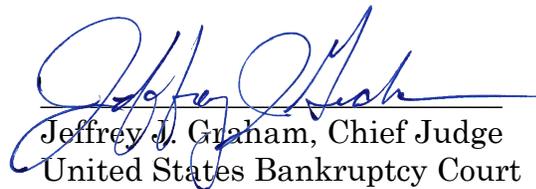
4. **Safeguarding Internal Communication**

All Judges and court staff shall take appropriate precautions in internal Court communications regarding HSDs, including notes and pre-decisional materials, not to include the protected substance of HSDs in any communication using the internet or a computer connected to a network.

5. **Questions about HSD Filing Procedures**

Any questions about how an HSD should be filed with the Court pursuant to this Order should be directed to the Clerk's Office at (317) 229-3800.

September 4, 2024


Jeffrey J. Graham, Chief Judge
United States Bankruptcy Court