



HONORABLE ROSLYNN R. MAUSKOPF
Director

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

MARY LOUISE MITTERHOFF
Associate Director
Department of Program Services

LEE ANN BENNETT
Deputy Director

WASHINGTON, D.C. 20544

JASON P. EDWARDS
Chief
Court Services Office

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MEMORANDUM

To: All United States Judges
Circuit Executives
District Court Executives
Clerks, United States Courts
Bankruptcy Administrators

From: Jason P. Edwards *Jason Edwards*

RE: ADDITIONAL INFORMATION REGARDING HIGHLY SENSITIVE DOCUMENTS
(INFORMATION)

As detailed in a January 6, 2021, [memorandum](#) regarding the threat to the Judiciary's electronic case management system from nation state actors, courts were called upon to take immediate action to protect the security of highly sensitive documents (HSDs). The response of courts to this call to action was swift. Within days, courts issued orders and new procedures to implement heightened security procedures necessary to protect HSDs.

As courts took action to address this initial urgent need, the AO's Court Services Office (CSO) undertook further efforts to assist courts in identifying and managing HSDs. Such efforts include the formation of an ad hoc subcommittee made up of representatives from the Circuit Executives, Appellate and Bankruptcy Appellate Panel Clerks, District Clerks, and Bankruptcy Clerks Advisory Groups to advise the AO on issues surrounding implementation of HSD policy. In addition, to assess how courts were identifying and managing HSDs, CSO conducted a review of 92 court HSD orders or notices that had been issued and provided to the AO as of February 1, 2021. Upon completion of that review and after discussion with the Executive Committee of the Judicial Conference, the following clarifications are suggested.

Classification of Search Warrants as HSDs

Based on the observations, feedback, and recommendations arising from these efforts, the AO is providing a refined recommendation regarding classification of search warrants as HSDs. Originally, courts were advised that search warrants should be treated as HSDs. Feedback from courts and review of court HSD orders indicate that a majority of search warrants do not contain the type of sensitive information sought by malicious state actors. Accordingly, it is suggested that search warrants, as a general rule, need not be treated as HSDs unless they relate to high profile national security criminal investigations. Notwithstanding this recommendation, courts should, of course, continue to exercise their discretion in determining which documents require HSD protection. For additional factors that might be used to determine which search warrants should be considered HSDs, see Highly Sensitive Document Procedures: Background FAQs, [Call to Action, FAQ No. 1](#).

Unsealing of HSDs

Courts are also reminded that with the ever-increasing public interest in access to court records, they should ensure that sealed records, even when treated as HSDs upon initial filing, are unsealed upon the expiration of the time period specified in the sealing order. Judicial Conference policy encourages courts to either specify when a record will be unsealed, set a presumptive time frame for unsealing, or, where no expiration date is specified, to regularly review and consider unsealing records. [Guide to Judiciary Policy, Vol. 10, Ch. 6, § 625.10](#). When HSDs are unsealed, they should be uploaded promptly to CM/ECF to ensure timely public access.

The AO will continue to develop and provide additional guidance as more experience is gained with HSD management. For currently available guidance and information, please refer to the Highly Sensitive Document Procedures JNet [page](#). Questions may be directed to [Candice Murphy-Farmer](#), 202-502-2728, or [Chris Vagner](#), 202-502-1581.