

I. **What is PII?**

PII is defined as “information which can be used to distinguish or trace an individual’s identity, such as their name, social security number, biometric records, etc., alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc.”

DOJ Instruction 0900.00.01 Incident Response Procedures for Data Breaches (August 6, 2013)

II. **Protection of Personally Identifiable Information**

Bankruptcy Rule 9037 – Privacy Protection for Filings Made With the Court

(a) Redacted filings

Unless the court orders otherwise, in an electronic or paper filing made with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual, other than the debtor, known to be and identified as a minor, or a financial-account number, a party or nonparty making the filing may include only:

- (1) the last four digits of the social-security number and taxpayer-identification number;
- (2) the year of the individual's birth;
- (3) the minor's initials; and
- (4) the last four digits of the financial-account number.

(b) Exemptions from the redaction requirement

The redaction requirement does not apply to the following:

- (1) a financial-account number that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;
- (2) the record of an administrative or agency proceeding unless filed with a proof of claim;
- (3) the official record of a state-court proceeding;
- (4) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed;
- (5) a filing covered by subdivision (c) of this rule; and
- (6) a filing that is subject to § 110 of the Code.

(c) Filings made under seal

The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the entity that made the filing to file a redacted version for the public record.

(d) Protective orders

For cause, the court may by order in a case under the Code:

- (1) require redaction of additional information; or
- (2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.

(e) Option for additional unredacted filing under seal

An entity making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.

(f) Option for filing a reference list

A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(g) Waiver of protection of identifiers

An entity waives the protection of subdivision (a) as to the entity's own information by filing it without redaction and not under seal.

11 U.S.C. § 107 – Public Access to Papers

(a) Except as provided in subsections (b) and (c) and subject to section 112, a paper filed in a case under this title and the dockets of a bankruptcy court are public records and open to examination by an entity at reasonable times without charge.

(b) On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may--

- (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information; or
- (2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.

(c)(1) The bankruptcy court, for cause, may protect an individual, with respect to the following types of information to the extent the court finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual or the individual's property:

(A) Any means of identification (as defined in section 1028(d) of title 18) contained in a paper filed, or to be filed, in a case under this title.

(B) Other information contained in a paper described in subparagraph (A).

(2) Upon ex parte application demonstrating cause, the court shall provide access to information protected pursuant to paragraph (1) to an entity acting pursuant to the police or regulatory power of a domestic governmental unit.

(3) The United States trustee, bankruptcy administrator, trustee, and any auditor serving under section 586(f) of title 28--

(A) shall have full access to all information contained in any paper filed or submitted in a case under this title; and

(B) shall not disclose information specifically protected by the court under this title.

III. What to do when you include PII in court documents?

- Filer's responsibility to properly redact personally identifiable information (i.e., Social Security number, taxpayer id number, year of birth, minor's name and financial account number)
- Court does not review documents to ensure compliance, although you might receive courtesy call from Clerk's Office or Chambers
- If you discover that personally identifiable information is contained in a document (unless waiving right to privacy protection), you must file a Motion to Redact or Restrict Access to the document/exhibit and submit an order to the Court that restricts access to the document. If redacted version not already filed, the order must include language requiring that the document will be re-filed with such information redacted.
 - If the document was scanned as one complete document, the Clerk's Office will restrict access to the entire document and the entire document will need to be re-filed.
 - If the document was scanned in multiple batches and such information is included in only one part of the docket entry, the Clerk's Office can restrict access to that particular exhibit and only that exhibit will need to be re-filed.
- When re-filing the document with the personally identifiable information removed, use the same docket event as was used for the originally filed document and add "redacted motion filed to replace docket #__" in the white text box. However, if the document is a motion for relief or a motion to sell, choose the "amended" motion for relief or "amended" motion to sell docket event to avoid a second fee being charged and add "redacted motion filed to replace docket # __" in the white text box.
- \$25.00 filing fee for Motion to Redact or Restrict Access to document; Court may waive this fee under appropriate circumstances
- Clerk's Office cannot allow access to the document to some parties and restrict access to others; the entire document/docket entry can only be restricted such that no parties have access.
- Form order restricting access to proof of claim available upon request from Bankruptcy Court Clerk's Office

- The Bankruptcy Court Miscellaneous Fee Schedule issued in accordance with 28 U.S.C. § 1930 provides that the fee to reopen a closed case must not be charged to redact a record pursuant to Rule 9037 if redaction is the only reason for reopening the case.
 - In the Western District of Virginia Bankruptcy Court, if the bankruptcy case has already been closed, it is not necessary to file a motion to reopen the case for the purposes of filing such a motion to redact.
- If you need assistance in filing such a motion, call Vickie Southall in the Bankruptcy Court Clerk's Office (857-2391, extension 132)