

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

AARON GREENSPAN,)
956 Carolina Street)
San Francisco, CA 94107)
)
Plaintiff,)
)
v.)
)
U.S. SECURITIES AND EXCHANGE)
COMMISSION,)
100 F Street, NE)
Washington, D.C. 20549)
)
Defendant.)

COMPLAINT

1. Plaintiff AARON GREENSPAN brings this Freedom of Information Act suit to force Defendant U.S. SECURITIES AND EXCHANGE COMMISSION (“SEC”) to produce various agency records regarding SEC’s investigations into a business founded by television personality Jim Cramer and other issues. In violation of FOIA, Defendant failed to issue a determination within the statutory deadline and failed to produce records responsive to the requests.

PARTIES

2. AARON GREENSPAN made the FOIA requests at issue in this case. GREENSPAN is a data journalist. He founded and operates the website PlainSite, an online platform created as an initiative to further legal transparency and anti-corruption by making government and business dealings more accessible and transparent to the general public.

3. Defendant U.S. SECURITIES AND EXCHANGE COMMISSION (“SEC”) is a federal agency subject to the Freedom of Information Act, 5 U.S.C. § 552.

JURISDICTION AND VENUE

4. This case is brought under 5 U.S.C. § 552(a)(4)(B) and presents a federal question conferring jurisdiction on this Court. *See* 28 U.S.C. § 1331.

5. Venue is proper under 5 U.S.C. § 552(a)(4)(B).

APRIL 16, 2021 FOIA REQUEST (THESTREET.COM)

6. On April 16, 2021, GREENSPAN submitted a FOIA request (the “First Request”) to SEC for records concerning CNBC anchor Jim Cramer’s business initiative, TheStreet.com. SEC’s acknowledgement letter that summarizes the First Request is attached as Exhibit 1.

7. On June 15, 2021, SEC acknowledged receipt of the First Request and assigned reference number 21-01565-FOIA to the matter. Ex. 1.

8. On June 21, 2021, SEC stated that it had identified “approximately 41 boxes” of records responsive to the First Request and asked GREENSPAN if he would be willing to narrow the scope of the Request. Ex. 2.

9. On June 21, 2021, GREENSPAN asked whether SEC could provide the types of records it identified in its search so he could make an informed decision on narrowing the scope of the First Request. Ex. 3.

10. SEC stated that it does not know what boxes contain which records. Instead, SEC asked GREENSPAN to identify specific types of investigation records. *Id.*

11. On December 10, 2021, GREENSPAN sought an estimated date of completion for the First Request and asked SEC to provide a description of the records in each box so he could potentially narrow the scope of the First Request. *Id.*

12. On December 13, 2021, SEC stated that it is not able to “determine the contents of the records that were located.” *Id.*

13. Further, in violation of 5 U.S.C. § 552(a)(7)(B)(ii), SEC failed to provide an estimated date of completion for the First Request. *Id.*

14. As of the date of this filing, SEC has not issued a determination within twenty business days under 5 U.S.C. § 552(a)(6)(A)(i) and has not complied with the statutory requirement under 5 U.S.C. § 552(a)(3)(A) to make the records promptly available to any person.

JANUARY 12, 2021 FOIA REQUEST (BRADLEY BONDI)

15. On January 12, 2021, GREENSPAN submitted a FOIA request (the “Second Request”) to SEC for all emails to or from any sec.gov email address and Bradley Bondi (bbondi@cahill.com) or his assistant(s) on his behalf from January 1, 2020 to present. SEC’s acknowledgement letter that paraphrases the FOIA request is attached as Ex. 4.

16. SEC assigned reference number 21-00677-FOIA to the matter. *Id.*

17. Between May and August 2021, GREENSPAN and SEC conferred about the scope and status of the Second Request.

18. On August 6, 2021, SEC stated that there are “approximately 3,761 pages of e-mail records” that are potentially responsive to the Second Request. Based on this information, GREENSPAN asked SEC to process “the first 32 hours” of the Second Request on the simple track and the rest on the complex track. SEC agreed to do so on August 6, 2021. Ex. 5.

19. Having received no further correspondence from SEC, GREENSPAN sought an estimated date of completion for the Second Request on October 13, 2021. *Id.*

20. On October 14, 2021, SEC stated that the estimated date of completion is “December 31, 2021” and will work towards issuing an “interim response” by November 12, 2021. *Id.*

21. On November 12, 2021, SEC stated that it is not able to make a partial release, but maintained that the estimated date of completion is December 31, 2021. Ex. 6 at 2.

22. On December 12, 2021, GREENSPAN asked whether SEC still plans to produce the records by December 31, 2021. *Id.* at 2.

23. In response, SEC stated that the Second Request is “overly broad” and the results are “taking a significant amount of time to review.” SEC asked whether GREENSPAN would narrow his Second Request to by adding keywords such as, “Musk” or “Tesla.” *Id.* at 1.

24. On December 22, 2021, GREENSPAN indicated that he does not wish to narrow the scope of the Second Request and asked SEC to provide all emails involving Bradley Bondi as stated in his original Second Request. *Id.* at 1.

25. As of the date of this filing, SEC has not issued a determination within twenty business days under 5 U.S.C. § 552(a)(6)(A)(i) and has not complied with the statutory requirement under 5 U.S.C. § 552(a)(3)(A) to make the records promptly available to any person.

OCTOBER 6, 2021 FOIA REQUEST (ROBOTS.TXT LINE 89)

26. On October 6, 2021, GREENSPAN submitted a FOIA request (the “Third Request”) to SEC for records regarding <https://www.sec.gov/robots.txt> Line 89. SEC’s acknowledgement letter that paraphrases the FOIA request is attached as Ex. 7.

27. By way of background, “robots.txt” is a file that is generally used to instruct search engines, such as Google and Bing, what not to index on a given website.

28. In this particular incident, the SEC placed a line, which happens to be on the 89th line in the robots.txt file for the www.sec.gov website, instructing search engines to not index a previously visible press release concerning the charges of securities fraud filed against Elon Musk by the SEC in 2018.

29. SEC assigned reference number 22-00028-FOIA to the matter. *Id.*

30. On November 30, 2021, SEC stated that it is not able to respond to the Third Request within the twenty-day statutory time period due to “unusual circumstances.” SEC also

claimed that it identified “approximately 4.49 gigabytes (equivalent to approximately 269,400 pages or 107.8 boxes) of emails that may be responsive” to the Request. Ex. 8.

31. On November 30, 2021, GREENSPAN narrowed the scope of the Third Request to the “e-mail inbox and sent messages for whomever in OIT was and/or is responsible for maintaining the SEC’s robots.txt file.” Ex. 9 at 3.

32. On December 10, 2021, GREENSPAN followed up with SEC whether it can conduct a narrower search based on the parameters he provided. *Id.* at 2.

33. On December 13, 2021, SEC stated that it queried the program office regarding the narrowed search parameter. *Id.* at 2.

34. Having received no further correspondence from SEC, GREENSPAN sought an estimated date of completion for the Third Request on January 14, 2022. SEC stated that it anticipates sending a response by January 21, 2022. Ex. 9 at 1.

35. As of the date of this filing, SEC has not issued a determination within twenty business days under 5 U.S.C. § 552(a)(6)(A)(i) and has not complied with the statutory requirement under 5 U.S.C. § 552(a)(3)(A) to make the records promptly available to any person.

**COUNT I – APRIL 16, 2021 FOIA REQUEST (THESTREET.COM),
SEC’S FOIA VIOLATION**

36. The above paragraphs are incorporated herein.

37. The Request seeks disclosure of agency records and were properly made.

38. SEC is a federal agency and subject to FOIA.

39. Included within the scope of the Request are one or more records or portions of records that are not exempt under FOIA.

40. In violation of 5 U.S.C. § 552(a)(6)(A)(i) and (a)(3)(A), SEC has failed to issue a determination and has failed to promptly produce records responsive to the First Request.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.