

AUG 15 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GREGORY J. LAROCHE,

Plaintiff - Appellant,

v.

U.S. SECURITIES AND EXCHANGE
COMMISSION,

Defendant - Appellee.

No. 06-17278

D.C. No. C 05-4760 CW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Claudia Wilken, District Judge, Presiding

Argued and Submitted July 18, 2008
San Francisco, California

Before: **W. FLETCHER, TALLMAN**, Circuit Judges, and **BERTELSMAN**,
District Judge.**

Plaintiff/Appellant, Gregory J. LaRoche (“LaRoche”), appeals the district
court’s grant of summary judgment in favor of the United States Securities and

* This disposition is not appropriate for publication and is not precedent except
as provided by Ninth Circuit Rule 36-3.

** Honorable William O. Bertelsman, Senior United States District Judge
for the Eastern District of Kentucky, sitting by designation.

Exchange Commission (“SEC”) on Laroche’s claim under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

In a FOIA case where “an adequate factual basis exists” for the district court’s decision, and “[w]here the district court’s decision turns mainly on its findings of fact, we apply the ‘clearly erroneous’ standard.” *Lion Raisins Inc. v. Dep’t of Agric.*, 354 F.3d 1072, 1078 (9th Cir. 2004) (citations omitted).

The district court’s conclusion that the SEC was entitled to summary judgment was not clearly erroneous because it is undisputed that the records sought by LaRoche are not “readily reproducible” by the SEC, *see* 5 U.S.C. § 552(a)(3)(B), in the searchable electronic format LaRoche requested, and an agency is not required to create new documents in order to satisfy a FOIA request. *See Kissinger v. Reporters Comm. for the Freedom of the Press*, 445 U.S. 136, 151-52 (1980).

Therefore, the district court’s grant of summary judgment in favor of the SEC is affirmed. Each party shall bear their own costs on appeal.

AFFIRMED.