

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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TOWAKI KOMATSU,

Plaintiff,

-v.-

THE CITY OF NEW YORK, et al.,

Defendants.

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ORDER

18 Civ. 3698 (LGS) (GWG)

**GABRIEL W. GORENSTEIN, UNITED STATES MAGISTRATE JUDGE**

In a Confidentiality Order filed January 15, 2021 (Docket # 474), this Court ordered that either party “may designate any document or information, in whole or in part, as confidential.” Order ¶ 1. The Order provided that “Confidential Information shall not be publicly disclosed to any person or in any Court filing unless an Order of the Court has been obtained permitting such disclosure.” Id. ¶ 2. Defendants have filed a letter indicating that they made a production of documents to plaintiff on February 1, 2021 (consisting of emails), that was designated as confidential pursuant to the Confidentiality Order and that each document was “watermarked . . . accordingly.” See Letter from Andrew Spears, filed March 17, 2020 (Docket # 523) (“City Letter”) at 1.

The defendants indicate, and the Court has verified, that plaintiff has apparently reproduced the contents of some of these emails in a public court filing made on March 13, 2021. See Letter from Towaki Komatsu, filed March 13, 2021 (Docket # 521), at 18 (referring to his reproduction of messages from a “2/1/21 185-page PDF file that I received from the New York City Law Department” and reproducing a screen shot of an email message); id. at 30 (“This is proven by the e-mail messages that are shown next that . . . appear on pages 103 and 104 in the 2/1/21 185-page PDF file . . .”); id. at 31 (reproducing text of email messages). The inclusion of the substance of any documents designated as confidential violates paragraph 2 of the Confidentiality Order.

Defendants have also represented that plaintiff has reproduced the substance of some of the confidential emails through a public Twitter account operated by plaintiff. See City Letter at 2.

Accordingly, the Court makes the following rulings:

- (1) The Clerk of the Court is directed to make Docket # 521 viewable only to the Court and to any attorney for a party to this case though the ECF system;

(2) Plaintiff is directed to file an affidavit (or sworn statement pursuant to 28 U.S.C. § 1746) on or before March 25, 2021, stating whether he has publicly disclosed — in any form, whether altered or otherwise — any information produced to him by the defendants that was designated as confidential under the Confidentiality Order. The affidavit should specifically address the claim regarding the court filing (Docket # 521) and the Twitter account. It must also give a complete description of all circumstances in which plaintiff has disclosed any documents produced by defendants and designated as confidential to anyone in any other manner.

(3) In the filing required by the Court's Order of March 12, 2021 (Docket # 520), plaintiff is directed to address whether his disclosure of material produced by defendants pursuant to the Confidentiality Order warrants, either by itself or in combination with any other conduct, sanctions, including the sanction of dismissal.

(4) Per their request, City Letter at 2 n. 2, defendants are directed to file under seal an affidavit or other sworn statement attaching the relevant tweets and explaining the basis for the affiant's knowledge. Defendants shall serve the affidavit (with attachments) on plaintiff. Plaintiff shall not disclose the contents of any material attached to the affidavit to any person or in any Court filing unless an Order of the Court has been obtained permitting such disclosure.

(5) If plaintiff has in fact publicly posted or disclosed any material consisting of or derived from documents produced to him by defendants that were marked as confidential, he must delete those posts or disclosures (or the confidential material therein).

Defendants are directed to email a copy of this Order to plaintiff.

In addition, the Clerk is directed to mail a copy of this Order to plaintiff.

Dated: March 18, 2021  
New York, New York

SO ORDERED.

  
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GABRIEL W. CORENSTEIN  
United States Magistrate Judge