

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA**

FREDDIE D. HEARD,)	
)	
Petitioner,)	Cv Action. No.
)	
v.)	
)	CIVIL COMPLAINT
DIRECTOR, OFFICE OF INFORMATION,)	
UNITED STATES DEPT. OF JUSTICE)	
LOUIS VINSON FRANKLIN, Sr.)	
)	
Respondent.)	
)	

STATEMENT OF THE CASE

1. Petitioner is seeking certain ministerial records pertaining to the federal grand jury. Respondents are engaging in the usual run-around.

JURISDICTION

2. Jurisdiction of this Court is invoked pursuant to 5 U.S.C. § 552(A)(4), which holds

“(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action. In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to

an affidavit of an agency concerning the agency's determination as to technical feasibility under paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B).”

3. See also 28 U.S.C. § 1331, the general federal question statute, 28 U.S.C. §§ 2201 and 2202, and 5 U.S.C. § 702 through 706.

PARTIES

Petitioner

4. Petitioner Freddie D. Heard is an Alabama prison inmate incarcerated at Eastern Correctional Facility, 200 Wallace Dr., Clio AL. 36017.

Respondents

5. Director, Office Of Information Policy, United States Dept. of Justice, 441 G St. NW, 6th Floor, Washington, D.C. 20530,

6. Respondent Louis Vinson Franklin, Sr., U.S. Attorney for the Middle District of Alabama, 131 Clayton St., Montgomery Alabama 36104

STATEMENT OF FACTS

7. Petitioner simply wishes to present his grievances to the federal grand jury and merely seeks to find out what the procedures are for so doing. So far all Petitioner has received from Respondent is double-talk and mis-cited law.

8. Petitioner's first request is attached hereto as Exhibit A and is adopted and incorporated herein by reference.

9. Respondents' response is attached hereto as Exhibit B. To say the response is dishonest is being charitable. See especially paragraph #2 of that response.

10. Petitioner's answer to that response is attached hereto as Exhibit C and is adopted and incorporated herein by reference.

LEGAL CLAIMS

11. Petitioner is not only entitled to the information he requests, he is entitled to, under The First Amendment, U.S. Constitution, to petition his government for the redress of grievances.

12. The federal grand jury is an arm of that Government. The right of petition extends to *all departments* of the Government. *California Motor Transport Co. v. Trucking Unlimited*, 92 S.Ct. 609, 612 (1972)(emphasis added).

13. The grand jury is not meant to be the private tool of a prosecutor. *United States v. Fisher*, 455 F.2d 1101 (2nd Cir. 1972).

The grand jury, as an institution, has long been understood as a "constitutional fixture in its own right," operating independently of any branch of the federal government. *United States v. Williams*, 504 U.S. 36, 47, 112 S.Ct. 1735, 1742 (1992) (internal quotation marks omitted). That independence allows the grand jury to serve as a buffer between the government and the people with respect to the enforcement of the criminal law. But the ability of the grand jury to serve this purpose depends upon maintaining the secrecy of its proceedings. The long-established policy of upholding the secrecy of the grand jury helps to protect the innocent accused from facing unfounded charges, encourages full and frank testimony on the part of witnesses, and prevents interference with the grand jury's deliberations. See *Douglas*

Oil Co. v. Petrol Stops Nw., 441 U.S. 211, 219, 99 S.Ct. 1667, 1673 (1979).

Pitch v. United States, 17-15016 (11th Cir. 03/20)

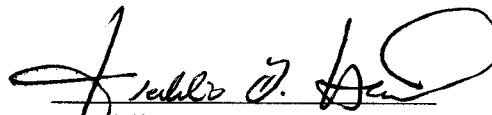
14. Petitioner is merely seeking to be one of those witnesses.

15. WHEREFORE, Petitioner moves this Court for an Order directing the Respondents to:

1. Schedule his appearance before the federal grand jury or, in the alternative,
2. Direct the Respondents to furnish him the printed material necessary (forms and instructions) to allow citizens access to the federal grand jury, or;
3. An honest admission that the Respondents have no intention of allowing citizens to present their grievances to the federal grand jury.

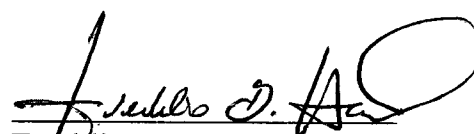
Respectfully submitted,

Dated: February 9th, 2021


Freddie D. Heard
Easterling Corr. Facility
200 Wallace Dr.
Clio, AL 36017

VERIFICATION

This certifies that I have read the foregoing Petition and that it is true and correct to the best of my knowledge.


Freddie D. Heard

Certificate of Mailing

This certifies that I have on this ^{9th} day of February, 2021, placed a true and exact copy of my

Civil Complaint

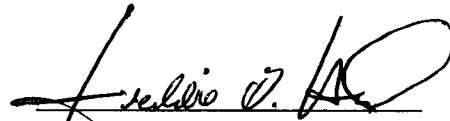
in the U.S. Mails, first-class postage prepaid, addressed to:

Director, Office Of Information Policy, United States Dept. of Justice,
441 G St. NW, 6th Floor,
Washington, D.C. 20530

Certified Mail # 7018 3090 0002 1032 6268

Louis Vinson Franklin, Sr., U.S. Attorney for the Middle District of Alabama
131 Clayton St.,
Montgomery Alabama 36104

Certified Mail # 7018 3090 0002 1032 6282


Freddie D. Heard

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

FREDDIE DEMOND HEARD,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.: 2:21-CV-125-MHT-KFP
)	
DIRECTOR, OFFICE OF)	
INFORMATION POLICY, and)	
SANDRA J. STEWART,)	
UNITED STATES ATTORNEY,)	
)	
Defendants.)	

DEFENDANTS' MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT

COMES NOW the Defendants, by and through Sandra J. Stewart, United States Attorney for the Middle District of Alabama, and responds to Plaintiff Freddie Demond Heard's Civil Complaint seeking "certain ministerial records pertaining to the federal grand jury," including "printed material necessary (forms and instructions) to allow citizens access to the federal grand jury." Doc. 1 at 1, 4. Defendants move to dismiss the Complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) because Heard failed to name a proper agency subject to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). Defendants also move for summary judgment under Federal Rule of Civil Procedure 56 because the agency is not withholding responsive records and it conducted a reasonable search in light of Heard's FOIA request.

I. STATEMENT OF FACTS

In July 2020, Freddie Heard sent a letter to the United States Attorney for the Southern District of Alabama making two FOIA requests. Gov. Ex. 1 (Decl. of Ebony Griffin) ¶ 5 at 2;

Attach. 1 at 5, 9.¹ First, he requested “copies of whatever documents you have that would show me what the rules are for my being able to present my grievances to the federal grand jury in Mobile.” Attach. 1 at 5. Second, he requested “to present my grievances to the Federal Grand Jury.” *Id.* at 9. The Executive Office for United States Attorneys (“EOUSA”) denied Heard’s request on August 7, 2020, explaining that “[g]rand jury material is exempt from mandatory release pursuant to 5 U.S.C. § 552(b)(3)” and Federal Rule of Criminal Procedure 6(e) regarding grand jury secrecy. Gov. Ex. 1 ¶ 6 at 2; Attach. 2 at 13.

Heard appealed, arguing that the denial was unsatisfactory and that 5 U.S.C. § 552(b)(3) did not apply to his request. Gov. Ex. 1 ¶ 7 at 3; Attach. 3 at 16. Heard said he did not seek material related to other grand jury proceedings, Attach. 3 at 16, but he instead wanted information on how a citizen could access the grand jury, *see id.*

DOJ’s Office of Information Policy (“OIP”) affirmed the denial of Heard’s requests on modified grounds on November 13, 2020. Gov. Ex. 1 ¶ 7 at 3; Attach. 3 at 30. OIP explained that “EOUSA does not maintain records as those that you have described. Additionally, please be advised that the FOIA does not require federal agencies to answer questions, create records, or conduct research in response to a FOIA request, but rather is limited to requiring agencies to provide access to reasonably described, nonexempt records.” Attach. 3 at 30 (citing *Students Against Genocide v. Dep’t of State*, 257 F.3d 828, 837 (D.C. Cir. 2001)).

Heard filed this FOIA action under 5 U.S.C. § 552(a)(4)(B). Doc. 1. He requests that the Court to order Defendants to do one of three things: (1) schedule Heard to testify before the federal grand jury; (2) provide forms and instructions regarding how citizens can access the federal grand

¹ Page references to Government’s Exhibit 1 and the attachments are to the continuous numbering added at the bottom of each page and marked with “Gov. Ex. 1 and Attachments” page numbers.

jury; or (3) admit that “Respondents have no intention of allowing citizens to present their grievances to the federal grand jury.” *Id.* at 4.

II. LEGAL BACKGROUND

The Freedom of Information Act (“FOIA”) “generally requires federal agencies to disclose records in their possession upon request,” unless an exemption applies. *News-Press v. U.S. Dep’t of Homeland Sec.*, 489 F.3d 1173, 1189 (11th Cir. 2007). *See* 5 U.S.C. § 552(b). In general, a person is entitled to government records after making a request that reasonably describes such records and that complies with the required procedures. *See Broward Bulldog, Inc. v. U.S. Dep’t of Just.*, 939 F.3d 1164, 1175 (11th Cir. 2019) (citing 5 U.S.C. § 552(a)(3)(A)). Once an agency receives a request for records, the agency is required to undertake an adequate search that is “reasonably calculated to uncover all relevant documents.” *See id.* (citation and internal quotation marks omitted). The agency will disclose responsive documents unless they fall under one of FOIA’s nine exemptions. *Miccosukee Tribe of Indians of Fla. v. United States*, 516 F.3d 1235, 1253 (11th Cir. 2008).

FOIA “requires a party to exhaust all administrative remedies before seeking redress in the federal courts.” *Taylor v. Appleton*, 30 F.3d 1365, 1367 (11th Cir. 1994). Exhaustion can be constructive, “when certain statutory requirements are not met by the agency,” including time limits to respond. *Id.* at 1368. Exhaustion can also be actual, “when the agency denies all or part of a party’s document request,” *id.*, including all administrative appeals, *id.* at 1369. *See also* 5 U.S.C. § 552(6)(A)(ii). Once a requester has exhausted all administrative remedies, a complaint may be filed in federal court. 5 U.S.C. § 552(a)(4)(B).

When a plaintiff sues under the FOIA alleging that an agency has failed to comply with a FOIA request, “federal jurisdiction is dependent upon a showing that an agency has

(1) ‘improperly’; (2) ‘withheld’; (3) ‘agency records.’” *Kissinger v. Reps. Comm. for Freedom of the Press*, 445 U.S. 136, 150 (1980) (citing 5 U.S.C. § 552(a)(4)(B)). *Cf. Statton v. Fla. Fed. Jud. Nominating Comm’n*, 959 F.3d 1061, 1064 (11th Cir. 2020) (explaining that jurisdiction in this context means “the ability to devise remedies rather than the ability to hear cases”); *Sikes v. United States Dep’t of Navy*, 896 F.3d 1227, 1232 n.2 (11th Cir. 2018) (stating that the elements of 5 U.S.C. § 552(a)(4)(B) “reference remedial power, not subject-matter jurisdiction” (citation omitted)).

“[A]gency possession or control is prerequisite to triggering any duties under the FOIA,” and FOIA guidelines do not impose on an agency an obligation “to compile or procure a record in response to a request.” *Kissinger*, 445 U.S. at 151 (citations and internal quotation marks omitted). An agency need not “create a document that does not exist in order to satisfy a requester.” *Broward Bulldog, Inc.*, 939 F.3d at 1176 (cleaned up) (citations and internal quotation marks omitted). Rather, FOIA “only obligates [an agency] to provide access to [information] which it in fact has created and retained.” *Id.* (quoting *Kissinger*, 445 U.S. at 152).

“Generally, FOIA cases should be handled on motions for summary judgment, once the documents in issue are properly identified.” *Miscavige v. I.R.S.*, 2 F.3d 366, 369 (11th Cir. 1993). Discovery in FOIA actions is typically impermissible until after the summary judgment phase when the agency submits supporting affidavits or declarations, and even then, discovery should only be permitted “when there is a genuine issue as to the adequacy of the agency’s search, its identification and retrieval procedures, or its good/bad faith.” *Tamayo v. U.S. Dep’t of Just.*, 544 F. Supp. 2d 1341, 1343 (S.D. Fla. 2008). “[A]ffidavits submitted by an agency are accorded a presumption of good faith.” *Whitaker v. Dep’t of Com.*, 970 F.3d 200, 208 (2d Cir. 2020) (internal

citations and quotation marks omitted); *see also Fla. Immigrant Advoc. Ctr. v. Nat'l Sec. Agency*, 380 F. Supp. 2d 1332, 1343 (S.D. Fla. 2005).

III. ARGUMENT

The Court should dismiss this case and grant summary judgment because what Heard seeks simply is not available from the Defendants through FOIA. First, the Court should dismiss the named Defendants because Heard sued individuals, and FOIA permits suits against agencies only. Even if Heard names a proper agency, however, the Court should grant summary judgment. Heard seeks records describing how citizens can access the federal grand jury, but DOJ and its component EOUSA do not maintain such records. Because any search for records would be futile, the agency's search was adequate and reasonable. The agency is not withholding documents, and it does not have to conduct additional research or create documents to satisfy FOIA.

A. Heard exhausted his administrative remedies and filed in a proper district.

As an initial matter, Defendants acknowledge that Heard has exhausted his administrative remedies, and thus he may properly file this case in federal court. Although Heard did not allege that he properly exhausted, as he did not reference or attach a final agency decision after appeal, *see* Doc. 1 at 2–3, Defendants acknowledge that he nonetheless exhausted his administrative remedies because the agency issued a final determination on Heard's appeal, Gov. Ex. 1 ¶ 7 at 3; Attach. 3 at 30–31.

Additionally, venue is appropriate in the Northern Division of the Middle District of Alabama. Although Heard directed his FOIA request to the United States Attorney's Office for the Southern District of Alabama, FOIA allows a plaintiff to file "in the district in which the complainant resides," among other places. 5 U.S.C. § 552(a)(4)(B). Heard is an inmate at the

Easterling Correctional Facility in Clio, Alabama, in Barbour County, within the Northern Division of the Middle District of Alabama. *See* Doc. 1 at 4.

B. The Court should dismiss Heard's Complaint because he did not name a proper defendant agency.

The Court should dismiss Heard's complaint with prejudice as against the Director of the Office of Information Policy and the United States Attorney for the Middle District of Alabama because FOIA permits suits against agencies, not individuals. FOIA provides that a court may "enjoin the agency from withholding agency records," 5 U.S.C. § 552(a)(4)(B), and it defines an agency as "each authority of the Government of the United States, whether or not it is within or subject to review by another agency," 5 U.S.C. § 551(1). A plaintiff that fails to sue an "agency" under FOIA has failed to state a claim, and the Court may properly dismiss the complaint under Fed. R. Civ. P. 12(b)(6). *See Statton v. Fla. Fed. Jud. Nominating Comm'n*, 959 F.3d 1061, 1065 (11th Cir. 2020) ("Because the Commission is not an agency subject to FOIA, Statton has not stated a claim on which relief can be granted.").

FOIA allows for suits against agencies, not against individual employees or department heads. *See Petrus v. Bowen*, 833 F.2d 581, 582 (5th Cir. 1987) (affirming the dismissal with prejudice as to named defendants for failure to state a claim because FOIA does not allow suit against individual employees, but remanding to give the plaintiff an opportunity to amend to name the proper defendant); *Friedman v. F.B.I.*, 605 F. Supp. 306, 317 (N.D. Ga. 1981) (granting a motion to dismiss a FOIA complaint against individual department heads, concluding that FOIA "clearly states that only an agency may be sued and the court has no jurisdiction over individual department heads"); *Del Rio v. Fed. Bureau of Investigation*, No. 08-21103-CIV, 2008 WL 11331745, at *2 (S.D. Fla. Oct. 21, 2008) (denying a motion to join various additional defendants,

including a former assistant U.S. Attorney, because “FOIA does not create a cause of action against individual federal agency employees”).

The only proper party is an agency subject to FOIA. 5 U.S.C. § 552. Because the Director of OIP and the U.S. Attorney for the Middle District of Alabama are not agencies subject to FOIA, the Court should dismiss the Complaint as against them with prejudice. If Heard does not amend his complaint to name an agency subject to FOIA, the Court should dismiss the case.

C. The agency is entitled to summary judgment because it conducted an adequate search, and it is not withholding any responsive records.

Assuming arguendo that Heard named a proper agency defendant such as the DOJ, *see Ginarte v. Mueller*, 534 F. Supp. 2d 135, 137–38 (D.D.C. 2008) (noting that DOJ is a proper agency defendant), the Court should grant summary judgment because the agency is not withholding responsive documents. Heard’s primary FOIA request is for records regarding how a citizen can present grievances to a federal grand jury,² but OIP denied Heard’s request because EOUSA does not maintain such records. Gov. Ex. 1 ¶ 7 at 3. When an agency asserts that it did not locate any responsive records, the Court must analyze whether the agency performed a sufficient search.

² Heard also requested an order directing the Defendants to schedule his appearance before a federal grand jury or to admit that they do not intend to allow citizens to present grievances to a federal grand jury. *See* Doc. 1 at 4. These are not appropriate requests under FOIA. FOIA allows a Court to enjoin an agency from withholding records and to order the production of records that have been improperly withheld from a FOIA requester. 5 U.S.C. § 552(a)(4)(B). It does not allow for other injunctive relief, such as creating a record to satisfy a request. *Kissinger v. Reps. Comm. for Freedom of the Press*, 445 U.S. 136, 152 (1980) (“The Act does not obligate agencies to create or retain documents; it only obligates them to provide access to those which it in fact has created and retained.”); *Guidry v. Comey*, 692 F. App’x 975, 978 (11th Cir. 2017) (per curiam) (unpublished) (affirming the grant of summary judgment for defendant because the request “would create a new record, rather than merely retrieving existing records,” and thus the request “fell outside the scope of a proper FOIA request”).

The primary issue in a FOIA case in which no responsive documents were located is “whether the agency established ‘beyond a material doubt’ that it ‘conducted a search reasonably calculated to uncover all relevant documents.’” *See Broward Bulldog, Inc.*, 939 F.3d at 1175 (quoting *Miccosukee Tribe*, 516 F.3d at 1248). The D.C. Circuit, “which has particular FOIA expertise,” frames this question as whether the agency has performed an “‘adequate’ search, with ‘adequacy . . . measured by the reasonableness of the effort in light of the specific request.’” *Whitaker v. Dep’t of Com.*, 970 F.3d 200, 206 (2d Cir. 2020) (quoting *Larson v. Dep’t of State*, 565 F.3d 857, 869 (D.C. Cir. 2009)). Drawing on cases from within the D.C. Circuit and other courts to have considered when an agency may decline to conduct a FOIA search, the Second Circuit recently determined that “an agency need not conduct a search that it has reasonably determined would be futile.” *Whitaker*, 970 F.3d at 206. In *Whitaker*, agency affidavits established that the agency did not have access to relevant portals where records were located, and that the agency did not maintain copies of the requested contracts, and thus, the Second Circuit affirmed the “district court’s determination that there was no genuine dispute of material fact as to the futility of a search by the agency for responsive records.” *Id.* at 209.

Here, the agency conducted an adequate search, that is, no search, because a search would be futile. As Attorney-Advisor Ebony Griffin explained in her declaration, neither DOJ nor its component EOUSA maintains or controls the grand jury grievance process. Gov. Ex. 1 ¶¶ 8–9 at 3. To the extent Heard’s complaint is construed as against DOJ or EOUSA, the Court should grant the agency summary judgment because it does not have responsive records and any additional search would be futile.

Further, agencies need not “create a document in response to a request, answer questions disguised as a FOIA request, or conduct research in response to a FOIA request.” *Bory v. U.S. R.R.*

Ret. Bd., 933 F. Supp. 2d 1353, 1359 (M.D. Fla. 2013) (citing *Landmark Legal Found. v. E.P.A.*, 272 F. Supp. 2d 59, 64 (D.D.C. 2003)). The agency has appropriately and adequately determined that it does not have responsive records on the question Heard raises, and it need not create a record or conduct additional research to satisfy its obligations under FOIA.

Because the agency has conducted a reasonable and good faith search for records, and no records exist, the agency is not withholding any documents and the Court should grant summary judgment. *See Lee v. U.S. Att’y for S. Dist. of Fla.*, 289 F. App’x 377, 380–81 (11th Cir. 2008) (per curiam) (unpublished) (noting “the adequacy of an agency’s search for documents requested under FOIA is judged by a reasonableness standard,” concluding search was reasonable and in good faith based on agency declarations, and affirming summary judgment to the agency).

CONCLUSION

For the foregoing reasons, Defendants respectfully requests that the Court dismiss Heard’s complaint and grant summary judgment.

Respectfully submitted this 29th day of April 2022.

SANDRA J. STEWART
United States Attorney

By: /s/ MaryLou E. Bowdre
MaryLou E. Bowdre
Assistant United States Attorney
Alabama Bar No. 9232N10E
E-mail: MaryLou.Bowdre@usdoj.gov
United States Attorney’s Office
Middle District of Alabama
Post Office Box 197
Montgomery, AL 36101-0197
Telephone: (334) 223-7280

CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, and I hereby certify that I have mailed, by United States Postal Service, a copy of same to the following non-CM/ECF participant:

Freddie Heard AIS# 272097
Easterling Correctional Facility
200 Wallace Drive
Clio, AL 36017-2615

/s/ MaryLou E. Bowdre
Assistant United States Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
FREDDIE DEMOND HEARD,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 2:21-cv-000125 (MHT-
)	KFP)
)	
OFFICE OF INFORMATION POLICY,)	
et. al.)	
Defendant.)	
_____)	

DECLARATION OF EBONY GRIFFIN

I, Ebony Griffin, declare the following under 28 U.S.C. § 1746:

1. I am currently employed as an Attorney-Advisor with Freedom of Information Act/Privacy Act (“FOIA/PA”) staff of the Executive Office for United States Attorneys (“EOUSA”), United States Department of Justice (“DOJ”). I have been employed in this capacity since December 2018. Prior to my current position with EOUSA, I worked as a Law and Policy Advisor with the Department of Labor (“DOL”), in FOIA and Privacy Act matters, involving embezzlement and election misconduct within labor unions. I conducted record searches across program offices and processed all phases of FOIA and Privacy Act requests to agency personnel. On many occasions in my DOL capacity, I provided legal advice on active litigation with DOJ to defend the government in FOIA and Privacy Act cases. As an attorney with EOUSA, I work as a liaison among other divisions and offices of DOJ, providing advice on responding to requests for access to information located in this and the other 93 districts of the United States Attorneys’ Offices (“USAOs”). Further, I review the adequacy of searches conducted in response to FOIA requests and determinations made by EOUSA staff to ensure that

the processing of records and determinations to disclose or withhold responsive records are made in accordance with FOIA, Privacy Act, and DOJ regulations at 28 C.F.R. §§ 16.3 *et. seq.* and § 16.40 *et seq.*, and pursuant to 5 U.S.C. § 552 and 5 U.S.C. § 552a.

2. Due to the nature of my responsibilities, I am familiar with the procedures followed by this office in responding to the FOIA requests submitted to EOUSA by Plaintiff, Freddie Heard (“Plaintiff”). Additionally, I have reviewed the Complaint that is the basis of the lawsuit and which this declaration addresses. I am also familiar with the FOIA request submitted by Plaintiff that EOUSA assigned FOIA Request Nos. EOUSA-2020-003875.

3. The statements contained in this declaration are based upon my personal knowledge, information provided to me in my official capacity as an Attorney-Advisor, and conclusions and determinations reached and made in accordance therewith.

4. I submit this Declaration in support of the Defendant’s Motion to the Complaint filed by Plaintiff, Freddie Heard, in Civil Action No. 21-000125.

I. ADMINISTRATIVE HISTORY OF PLAINTIFF’S FOIA/PA REQUEST

5. On July 30, 2020, EOUSA received the Plaintiff’s FOIA request seeking, “*whatever documents you have that would show me what the rules are for my being able to present my grievances to the federal grand jury in Mobile.... I wish to present my grievances to the Federal Grand Jury.*” See Request, Pages 1 and 5, Attachment 1.

6. EOUSA responded in a standard manner for grand jury investigations with a denial of grand jury records, pursuant to 5 U.S.C. § 552(b)(3), which exempts from release “matters specifically exempted from disclosure by statute” and Rule 6(e) of the Federal Rules of Procedure (Pub. L. 95-78, 91 Stat. 319 (1977) which provides proceedings shall be secret, disclosure of grand jury information is prohibited by law. See Response, Attachment 2.

7. On September 18, 2020, the requester appealed the response EOUSA-2020-0003875 to the Office of Information Policy (OIP). OIP responded to the requester on November 13, 2020, and affirmed the denial disposition on modified grounds, "EOUSA does not maintain records such as those that you described." See Attachment 3.

II. **EXPLANATION OF RECORD TYPE**

8. Records sought regarding grievances to the federal courts by the Plaintiff in the FOIA Request, EOUSA-2020-003875, are not under the purview of DOJ nor the EOUSA. These records may be maintained by the United States District Courts.

9. EOUSA does not maintain or control the grand jury grievance process in the Federal District Courts.

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury that the foregoing is true and correct, to the best of my knowledge and belief.

Executed this 22th day of April, 2022.

Ebony Griffin

Ebony Griffin
Attorney-Advisor
Executive Office for United States Attorneys
Freedom of Information/Privacy Act Staff

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

FREDDIE DEMOND HEARD Sr.,
Plaintiff,

V.

Case No. 2:21-CV-125-MHT-RFP

DIRECTOR OFFICE OF
INFORMATION POLICY, and
SANDRA J. STEWART, ACTING
UNITED STATES ATTORNEY,
Defendants.

MOTION REQUESTING TO STAY THE MAY 25TH, 2022 ORDER FOR PLAINTIFF
TO RESPOND BY JUNE 15TH, 2022

COMES NOW, Freddie Demond Heard Sr., [hereinafter "Plaintiff"] and moves this Court in the above styled cause to STAY the proceedings of its May 25th, 2022 ORDER for Plaintiff to respond by June 15th, 2022 to the Defendants MOTION TO DISMISS (Doc.13) showing cause of why Defendants motion should not be GRANTED. Plaintiff shows in support of the above styled cause that:

STATEMENT OF FACTS

1. Plaintiff filed a Complaint (Doc.1) and Motion For Leave to Proceed in

Forma Pauperis by certified mail.

2. Plaintiff received on or about February 25th, 2022 an ORDER issued by this Court stating:

"The Court previously granted Plaintiffs Motion for Leave To Proceed in Forma Pauperis and stayed service pending its obligatory review of this matter pursuant to 28 U.S.C. §1915(e). Doc.5. Based on the Courts review of the Complaint (Doc.1), it is ORDERED that the STAY of service of process is LIFTED.

The CLERK is DIRECTED to serve Defendants with a copy of the Complaint (Doc.1) by certified mail.

Done this 25th day of February, 2022. ... "See (Doc.7)

3. Plaintiff received on or about May 25th, 2022 another ORDER issued by this Court stating:

"Upon consideration of Defendants Motion to Dismiss (Doc.13), it is ORDERED that Plaintiff must file a written response by June 15, 2022, and show cause why the motion should not be granted. Defendants may file a reply by June 29, 2022. ... "See (Doc. ?)

4. Plaintiff declares and claims he was never given ANY NOTICE of ANY Motion To Dismiss filed by Defendants from the Easterling Correctional Facility mailroom Clerk Sharon Blakley.

5. Plaintiff declares and claims he was never given ANY NOTICE of ANY Motion To Dismiss filed by Defendants from this Courts Clerk.

ARGUMENT

6. Plaintiff contends that he can not begin to refute ANY claims the Defendants may have alleged in their Motion To Dismiss, because Plaintiff was not provided with the Motion To Dismiss from this Courts Clerk of Office, to maintain ANY defense Plaintiff may have. This clearly deprives Plaintiff of his guaranteed fundamental rights found in the First, Fifth and Fourteenth Amendments of the United States Constitution to the access to court and the entitlement to the redressing of grievances.

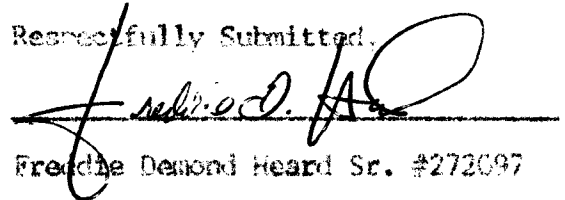
Plaintiff prays this Court will:

7. Issue an immediate ORDER to STAY its May 25th, 2022 ORDER that Plaintiff must file a written response by June 15, 2022 and incorporate tolling the time for responding to Defendants Motion To Dismiss upon the Clerk of Office to a time certain thereafter; or

8. In alternative Do Not GRANT Defendants Motion To Dismiss and extend the time for Plaintiff to make arrangements to retrieve the Motion To Dismiss and prepare a defense if necessary.

WHEREFORE the premises stated, Plaintiff prays this Court will GRANT the necessary relief due to Plaintiff claimed herein. DONE this 1st day of June 2022.

Respectfully Submitted,



Freddie Demond Heard Sr. #272097



U.S. Department of Justice
Office of Information Policy
Sixth Floor
441 G Street, NW
Washington, DC 20001

Telephone: (202) 514-3642

June 9, 2022

Freddie Demond Heard
AIS No. 00272097
Easterling Correctional Facility
200 Wallace Drive
Clio, AL 36017-2615

VIA: U.S. Mail

Dear Freddie Demond Heard:

This responds to your letter dated June 1, 2022, regarding your request for a Motion to Stay a court order.

Please note that the principal administrative function of the Office of Information Policy (OIP) is the adjudication of appeals from the denial of access to information pursuant to the Freedom of Information Act (FOIA) and the Privacy Act of 1974 by components of the Department of Justice (DOJ). OIP also responds to FOIA requests on behalf of the Office of the Attorney General and other senior leadership offices within DOJ. Unfortunately, OIP cannot be of any further assistance regarding this matter.

Sincerely,

PRISCILLA JONES Digitally signed by PRISCILLA
JONES
Date: 2022.06.09 10:45:59 -04'00'

for
Daniel Castellano
Associate Chief, for Matthew Hurd,
Chief, Administrative Appeals