

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

FREDDIE D. HEARD,

Plaintiff,

v.

DIRECTOR, OFFICE OF
INFORMATION POLICY,
United States Dept. of Justice,
and SANDRA J. STEWART,

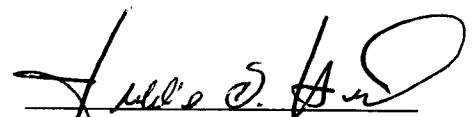
Defendants.

CIVIL ACTION NO:
2:2-cv-125-MHT

NOTICE OF APPEAL

Plaintiff hereby appeals to the Fifth Circuit Court of Appeals from the final judgment of this Court entered on the 26th day of January, 2023.

Respectfully Submitted,



Freddie Heard
272097
E. C. F.
200 Wallace Dr.
Clio, Ala. 36017

Certificate of Service

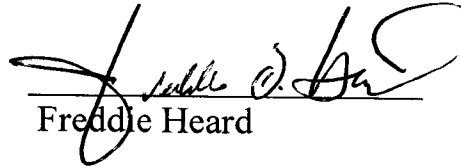
This certifies that I have on this 22 day of February, 2023 placed a true and exact copy of my

NOTICE OF APPEAL

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

Office of the Attorney General
501 Washington Ave.
Montgomery, Al. 36130

Marylou E. Bowdre
U S Atty's Office
131 Clayton St
Montgomery, AL 36104


Freddie Heard

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

March 13, 2023

Freddie Demond Heard
Easterling CF - Inmate Legal Mail
200 WALLACE DR
CLIO, AL 36017-2615

Appeal Number: 23-10651-H

Case Style: Freddie Heard v. Director, Office of Information Policy, et al

District Court Docket No: 2:21-cv-00125-MHT-KFP

**NOTICE TO INCARCERATED APPELLANT OF THE DOCKETING AND FILING FEE
REQUIREMENT UNDER THE PRISON LITIGATION REFORM ACT**

The district court has denied your request to proceed with this appeal in forma pauperis. The Prison Litigation Reform Act of 1995 (hereinafter "the Act"), 28 U.S.C. § 1915 (as amended), requires, in all civil appeals by prisoners, payment of the docketing and filing fee to the clerk of the United States District Court where you filed your notice of appeal. If you are unable to pay the docketing and filing fee in full at this time, you may allow the institution of your confinement to pay the fee in installments from your prison account. To do so, you should read, complete and sign the enclosed CONSENT FORM which incorporates provisions authorized by the Act. The form should be returned to this office. Please read the enclosed CONSENT FORM carefully -- it contains important information concerning the requirements of the Act in connection with payment of the filing fee.

If, within 30 days from the date of this notice, you HAVE NOT either:

(1) completed, signed and returned to this office the enclosed CONSENT FORM,

OR

(2) paid the docketing and filing fee in full to the district court,

this appeal will be dismissed for want of prosecution, pursuant to 11th Cir. Rule 42-1(b).

If we receive a completed and signed CONSENT FORM, it will be treated as a request for leave to proceed with this appeal and submitted to the Court for decision. If we receive notice from

the district court that you have paid the docketing and filing fee in full, your appeal will proceed.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
New / Before Briefing Cases:	404-335-6135	Capital Cases:	404-335-6200
Cases in Briefing / After Opinion:	404-335-6130	CM/ECF Help Desk:	404-335-6125
Cases Set for Oral Argument:	404-335-6141		

Enclosure(s)

PLRA-5 Ltr encl CF DC denied Leave

U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT (CIP)

Freddie Demond Heard Sr. vs. Dir. Office of Info. Policy, et al Appeal No. 23-10651-H
11th Cir. R. 26.1-1(a) requires the appellant or petitioner to file a Certificate of Interested Persons and Corporate Disclosure Statement (CIP) with this court within 14 days after the date the case or appeal is docketed in this court, and to include a CIP within every motion, petition, brief, answer, response, and reply filed. Also, all appellees, intervenors, respondents, and all other parties to the case or appeal must file a CIP within 28 days after the date the case or appeal is docketed in this court. **You may use this form to fulfill these requirements.** In alphabetical order, with one name per line, please list all trial judges, attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this case or appeal, including subsidiaries, conglomerates, affiliates, parent corporations, any publicly held corporation that owns 10% or more of the party's stock, and other identifiable legal entities related to a party. *(Please type or print legibly):*

Ala. Att'y Gen. Steven Marshall, 501 Washington Ave, Montgomery AL. 36130

Ala. Dist. Att'y Ashley Rich, Government Pl., 205 Government St. C701, Mobile AL. 36652

Charles Dixon AIS# 139244, Easterling Corr. Gen., 200 Wallace Dr., Clio AL. 36017

Freddie Demond Heard Sr., AIS# 272097, Easterling Corr. Gen., 200 Wallace Dr., Clio AL. 36017

Jeffery S. McCarter AIS# 176854, Easterling Corr. Gen., 200 Wallace Dr., Clio AL. 36017

Senator Vivian Figures, 11 S. Union St. 7th Fl. Montgomery, AL. 36130

U.S. Att'y Gen. Merrick Garland, U.S. Dept. Justice, 950 Pennsylvania Ave. NW Ste 2521 Washington DC 20210

U.S. Att'y Marylou E. Bowdre, 131 Clayton St., Montgomery AL. 36104

U.S. District Judge Myron H. Thompson, 1 Church St., Montgomery AL. 36104

U.S. Magistrate Sonja F. Bivens, U.S. Courthouse, 155 Joseph St., Mobile AL. 36602

William C. Hammond AIS# 277624, Easterling Corr. Gen., 200 Wallace Dr., Clio AL. 36017

Submitted by:

Signature: Freddie demond Heard Sr.

Name: Freddie Demond Heard Sr.

Prisoner # (if applicable): 272097

Address: Easterling Corr. Gen., 200 Wallace Drive, Clio Alabama 36017 (HI-60A)

Telephone #: N/A

United States Court of Appeals
For the Eleventh Circuit
56 Forsyth Street N.W.
Atlanta, Georgia 30303
ATTN: Honorable Clerk David J. Smith

RE: Freddie Demond Heard AIS# 272097, inquiring the status of:
Appeal Number: 23-10651-H
Case Style: Freddie Heard v. Director, Office of Information Policy, et
al
District Court Docket No.: 2:21 cv-00125-MHT-KFP

June 6, 2023

Dear Hon. Clerk David J. Smith,

My name is Freddie D. Heard, and I'm writing to inquire about the status of my appeal process. On March 13, 2023, I received a letter from this court, giving me NOTICE, that I had 30 days from that NOTICE to fill out the consent form to allow this institution where I'm confined to deduct in installments the amount due for the filing fee to proceed in this appeal. I did complete that consent form and sent it back to this court within the allotted time of the 30 days, but since then the institution has not complied with any ORDER from this court and/or my agreement giving consent to deduct the funds.

Also, on March 20, 2023, I received another letter from this court, giving me NOTICE that I had 14 days from that NOTICE, to comply with 11th Cir. Rules 26.1-1, to complete a Certificate of Interested Persons and Corporate Disclosure Statement (CIP). I complied with that NOTICE also within the allotted time of the 14 days and returned it to the court.

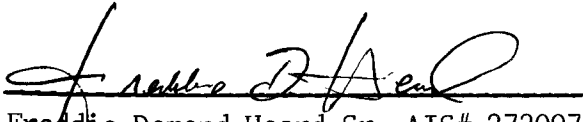
From the date of my compliance, I have not received any legal mail from this court or any court pertaining to this appeal thereafter. If I'm not

proceeding properly in this unknown territory, will you please keep me abreast of the procedures to be followed so I may exercise my guaranteed fundamental rights in the FIRST and FOURTEENTH Amendment(s) in the United States Constitution to the access to this court. This Law library is not up to standard when it comes to information for inmates.

Please inform me of the status of my appeal at this point.

Thank You for Your time....I'm looking forward to your correspondence.

Respectfully Submitted,



Freddie Demond Heard Sr. AIS# 272097

Easterling Correctional Center

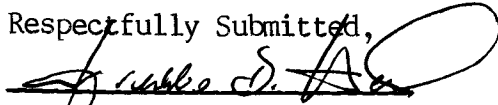
200 Wallace Dr.

Clio, Alabama 36017

CERTIFICATE OF SERVICE

I, Freddie Demond Heard AIS# 272097, certify that I have served a copy of the forgoing Letter inquiring the status of Appeal # 23-10651-H by placing the same in the legal mailbox here at Easterling Correctional Center, 200 Wallace Drive in Clio, Alabama 36017 addressed to United States Court of Appeals For the Eleventh Circuit at 56 Forsyth Street N.W. in Atlanta, Georgia 30303 with ATTN: Hon. Clerk David J. Smith. DONE this the 6th day of June in 2023.

Respectfully Submitted,



Freddie Demond Heard Sr. AIS# 272097

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

June 23, 2023

Clerk - Middle District of Alabama
U.S. District Court
1 CHURCH ST
MONTGOMERY, AL 36104

Appeal Number: 23-10651-H
Case Style: Freddie Heard v. Director, Office of Information Policy, et al
District Court Docket No: 2:21-cv-00125-MHT-KFP

The enclosed copy of this Court's Order of Dismissal is issued as the mandate of this court. See 11th Cir. R. 41-4. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

Any pending motions are now rendered moot in light of the attached order.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

Enclosure(s)

DIS-4 Multi-purpose dismissal letter

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-10651

FREDDIE DEMOND HEARD,

Plaintiff-Appellant,

versus

DIRECTOR, OFFICE OF INFORMATION POLICY,
United States Dept. of Justice,
SANDRA J. STEWART,

Defendants-Appellees,

LOUIS VINSON FRANKLIN, SR.,

Defendant.

Appeal from the United States District Court
for the Middle District of Alabama
D.C. Docket No. 2:21-cv-00125-MHT-KFP

Before: JORDAN, NEWSOM, AND GRANT, Circuit Judges.

BY THE COURT:

Freddie Heard, an Alabama prisoner, filed a Freedom of Information Act (“FOIA”) action, pursuant to 5 U.S.C. § 552(a)(4)(B).¹ He named as defendants the Department of Justice’s Office of Information Policy (“OIP”) Director, and Louis Franklin, the U.S. Attorney for the Middle District of Alabama. He requested that the district court order the defendants to do one of three things: (1) schedule Heard to testify before a federal grand jury; (2) provide forms and instructions regarding how citizens can access a federal grand jury; or (3) admit that they had “no intention

¹ In July 2020, Heard sent a letter to the U.S. Attorney for the Southern District of Alabama, making two FOIA requests. 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.” Second, he requested “to present my grievances to the Federal Grand Jury.” The Executive Office for U.S. Attorneys denied Heard’s request, and the OIP affirmed on appeal. Heard then filed the instant complaint.

23-10651

Order of the Court

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of allowing citizens to present their grievances to the federal grand jury.”

The defendants moved to dismiss Heard’s complaint, arguing, as relevant, that they were not proper parties to the suit, because FOIA permits only suits against agencies, not individuals. The district court ultimately agreed and it granted the motion to dismiss. The district court also denied Heard’s motion for leave to amend his complaint, and it denied his Fed. R. Civ. P. 59(e) motion for reconsideration. Heard has appealed those orders and now moves this Court for leave to proceed.

All prisoners seeking to commence or appeal a judgment in a civil non-habeas action must, under the Prison Litigation Reform Act (“PLRA”), pay the filing fees, regardless of whether they are indigent or the appeal is non-frivolous. 28 U.S.C. § 1915(a), (b). Because Heard has consented to pay the filing fee, the only remaining issue is whether the appeal is frivolous. See 28 U.S.C. § 1915(e)(2)(B)(ii). An action is frivolous if it is without arguable merit in law or fact. *Napier v. Preslicka*, 314 F.3d 528, 531 (11th Cir. 2002), *overruled on other grounds by Hoever v. Marks*, 993 F.3d 1353 (11th Cir. 2021) (*en banc*).

Here, the district court properly granted the defendants’ motion to dismiss, and Heard has no non-frivolous issues for appeal. See *id.* Heard’s FOIA claim against the OIP Director and the U.S. Attorney for the Middle District of Alabama failed to state a claim upon which relief may be granted, as individuals are not liable under the FOIA, but only federal agencies. See 5 U.S.C. § 552a(g)(1)

(setting forth that an “individual may bring a civil action against the agency” for a FOIA violation). A plain reading of the statute provides that a FOIA claim can only be brought against agencies of the federal government and not individuals, officers, or employees thereof. *See* 5 U.S.C. §§ 552(a)(4)(B) & 552a(g); *see also Petrus v. Bowen*, 833 F.2d 581, 582-83 (5th Cir. 1987) (holding that FOIA does not create a cause of action against individual employees of federal agencies). Thus, whatever claim Heard intended to raise in his complaint, he asserted it against improper defendants, and the district court did not err in making that determination.

Additionally, the district court correctly denied Heard’s motion for leave to amend his complaint. In his proposed amended complaint, Heard removed the OIP Director as a defendant, but still named the U.S. Attorney as a party. For the same reasons as discussed above, the proposed amended complaint would still have been subject to dismissal. *See Chang v. JP Morgan Chase Bank, N.A.*, 845 F.3d 1087, 1094 (11th Cir. 2017).

Finally, the district court did not abuse its discretion in denying Heard’s motion for reconsideration. *See Richardson v. Johnson*, 598 F.3d 734, 740 (11th Cir. 2010). Heard did not present any cognizable arguments challenging the district court’s order granting the defendants’ motion to dismiss, but rather, simply repeated allegations that he had already presented throughout the proceedings and provided seemingly irrelevant citations. Accordingly, the district court did not err in denying Heard’s reconsideration motion, and any challenge to that order would be frivolous.

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Order of the Court

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Accordingly, this Court now finds that the appeal is frivolous, DENIES leave to proceed, and DISMISSES the appeal.