

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 26 2017

FOR THE NINTH CIRCUIT

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

DANNY JOSEPH FABRICANT,

Plaintiff-Appellant,

v.

DEPARTMENT OF JUSTICE,

Defendant-Appellee.

No. 15-17445

D.C. No. 4:13-cv-00562-JAS

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
James Alan Soto, District Judge, Presiding

Submitted January 18, 2017**

Before: TROTT, TASHIMA, and CALLAHAN, Circuit Judges.

Danny Joseph Fabricant, a federal prisoner, appeals pro se from the district court's summary judgment in his Freedom of Information Act ("FOIA") action arising out of his request for documents related to an informant who testified against him at a trial. We have jurisdiction under 28 U.S.C. § 1291. We review de

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

novo. *Animal Legal Def. Fund v. U.S. Food & Drug Admin.*, 836 F.3d 987, 990 (9th Cir. 2016) (en banc). We affirm.

The district court properly granted summary judgment because Fabricant failed to raise a genuine dispute of material fact as to whether defendant had not “conducted a search reasonably calculated to uncover all relevant documents.” *Hamdan v. U.S. Dep’t of Justice*, 797 F.3d 759, 770-71 (9th Cir. 2015) (citations and internal quotation marks omitted) (setting forth requirements for demonstrating adequacy of search for documents).

The district court did not abuse its discretion in denying Fabricant’s Fed. R. Civ. P. 56(d) motion because Fabricant failed to show how allowing additional discovery would have precluded summary judgment. *See Citizens Comm’n on Human Rights v. Food & Drug Admin.*, 45 F.3d 1325, 1329 (9th Cir. 1995) (setting forth standard of review and concluding that district court did not abuse discretion in granting summary judgment in FOIA action before allowing an opportunity to conduct additional discovery).

The district court did not abuse its discretion in denying Fabricant’s motion for costs because Fabricant failed to establish that he was both eligible for and entitled to costs. *See Hiken v. Dep’t of Def.*, 836 F.3d 1037, 1042-44 (9th

Cir. 2016) (setting forth standard of review and requirements for fees and costs in a FOIA action).

All pending requests are denied, including appellant's most-recently-filed request to correct appellant's name.

AFFIRMED.