

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 22 2018

FOR THE NINTH CIRCUIT

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

MARTIN BETTWIESER,

Plaintiff-Appellant,

v.

BILLY GANS, AKA William Gans, AKA
Billy Gantz; et al.,

Defendants-Appellees.

No. 17-35631

D.C. No. 1:15-cv-00493-EJL-REB

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
Edward J. Lodge, District Judge, Presiding

Submitted March 13, 2018**

Before: LEAVY, M. SMITH, and CHRISTEN, Circuit Judges.

Martin Bettwieser appeals pro se from the district court's judgment dismissing his action alleging violations of the Freedom of Information Act ("FOIA") and Privacy Act. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Animal Legal Def. Fund v. U.S. Food & Drug Admin.*, 836 F.3d

* 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).

987, 989-90 (9th Cir. 2016) (summary judgment); *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1040 (9th Cir. 2011) (dismissal under Fed. R. Civ. P. 12(b)(6)). We affirm.

The district court properly granted summary judgment for the United States Postal Service because Bettwieser failed to raise a genuine dispute of material fact as to whether he submitted a request under FOIA and the Privacy Act. *See* 39 C.F.R. § 265.7(a)(1)-(2) (2015) (describing requirements for submitting a FOIA request); 39 C.F.R. § 266.6(a) (2015) (describing requirements for submitting a Privacy Act request).

The district court properly dismissed the individual defendants because individuals are not proper defendants in a FOIA or Privacy Act action. *See Drake v. Obama*, 664 F.3d 774, 785 (9th Cir. 2011) (“FOIA does not apply to any of the Defendants because they are all individuals, not agencies.”); *Rouse v. U.S. Dep’t of State*, 567 F.3d 408, 413 n.3 (9th Cir. 2009) (“Privacy Act only permits suits against an ‘agency.’”).

We reject as without merit Bettwieser’s contentions concerning discovery, default judgment, the representation of defendants by the Office of United States Attorneys, and *Bivens* remedies.

We do not consider matters not specifically and distinctly raised and argued

in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.