

**United States Court of Appeals**  
**For the Eighth Circuit**

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No. 15-3751

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Darnell Wesly Moon

*Plaintiff - Appellant*

v.

Federal Bureau of Prisons

*Defendant - Appellee*

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Appeal from United States District Court  
for the Eastern District of Missouri - Cape Girardeau

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Submitted: April 14, 2016

Filed: April 28, 2016

[Published]

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Before BENTON, ARNOLD, and SHEPHERD, Circuit Judges.

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PER CURIAM.

Darnell Moon, formerly a federal inmate at the United States Penitentiary at Terre Haute, Indiana, appeals the district court's preservice dismissal of his action seeking relief under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. We grant his motion for leave to proceed in forma pauperis.

While we agree that a litigant must exhaust administrative remedies before bringing a FOIA action in federal court, see Elnashar v. United States Dep't of Justice, 446 F.3d 792, 796 (8th Cir. 2006) (exhaustion of administrative remedies is prerequisite to bringing suit under FOIA), we conclude that because FOIA is silent as to whether exhaustion is a pleading requirement or an affirmative defense, see 5 U.S.C. § 552, the argument of non-exhaustion is an affirmative defense rather than a pleading requirement, see Jones v. Bock, 127 S.Ct. 910, 919 (2007) (if an act is silent as to whether exhaustion should be pled by plaintiff or treated as affirmative defense, general practice under Federal Rules of Civil Procedure dictates that exhaustion should be treated as affirmative defense). Thus, Mr. Moon was not required to plead exhaustion in his complaint.

Accordingly, we reverse and remand for further proceedings consistent with this opinion.

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