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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 Kieran M. Gallagher,
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10 Plaintiff,

11 v.

12 Janet A Napolitano, Secretary of the
13 Department of Homeland Security,

14 Defendant.

No. CV-12-02733-PHX-JAT

ORDER

15 Pending before the Court is Defendant's Motion to Dismiss (Doc. 5). The Court
16 now rules on the Motion.

17 On December 28, 2012, Plaintiff filed a Complaint in this Court. In his
18 Complaint, Plaintiff alleges that he submitted a request to Defendant pursuant to the
19 Freedom of Information Act ("FOIA") on July 25, 2012, requesting information
20 regarding Plaintiff's past employment with the Federal Air Marshal Service. Plaintiff
21 further alleges that, on September 7, 2012, Defendant informed Plaintiff that he needed to
22 include an accompanying notarized perjury statement with his request. Plaintiff alleges
23 that, on October 3, 2012, Defendant acknowledged that Defendant received the
24 conforming request. Plaintiff finally alleges that, as of December 28, 2012, Defendant
25 had not otherwise responded to Plaintiff's request. As relief, Plaintiff seeks that
26 Defendant comply with Plaintiff's FOIA request.

27 On January 28, 2013, Defendant moved to dismiss Plaintiff's Complaint pursuant
28 to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Plaintiff did not respond to

1 the Motion to Dismiss.

2 Defendant argues that Defendant Napolitano must be dismissed from this case
3 because a Plaintiff may not assert a claim against an individual federal official because
4 the proper Defendant is the agency. The Court agrees that Plaintiff has failed to state a
5 claim against Secretary Napolitano pursuant to Federal Rule of Civil Procedure 12(b)(6)
6 because, in a FOIA action, the proper Defendant is the agency. *See Drake v. Obama*, 664
7 F.3d 774, 785-86 (9th Cir. 2011) (holding that District Court correctly dismissed
8 Plaintiffs' FOIA causes of action for failure to state a claim because all of the Defendants
9 were individuals and not agencies).

10 The Court will nonetheless allow Plaintiff leave to amend to possibly add a proper
11 Defendant. If Plaintiff chooses to amend, he shall include allegations in his complaint
12 explaining how FOIA entitles him to relief in this case.

13 Based on the foregoing,

14 **IT IS ORDERED** that Defendant's Motion to Dismiss (Doc. 5) is granted. The
15 Clerk of the Court shall dismiss Defendant Napolitano from this case.

16 **IT IS FURTHER ORDERED** that Plaintiff shall file an amended complaint
17 within 15 days of the date of this Order. If Plaintiff does not file an amended complaint
18 within 15 days of the date of this Order, the Clerk of the Court shall dismiss this case and
19 enter judgment accordingly.

20 Dated this 18th day of March, 2013.

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25 James A. Teilborg
26 Senior United States District Judge
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