

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION**

DARNELL WESLEY MOON, )  
Plaintiff, )  
v. )  
FEDERAL BUREAU OF )  
INVESTIGATIONS, )  
Defendant. )  
No. 1:15CV197 ACL

**MEMORANDUM AND ORDER**

Plaintiff seeks leave to proceed in forma pauperis in this civil action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). The motion is granted.

## Standard of Review

Under 28 U.S.C. § 1915(e), the Court is required to dismiss a complaint filed in forma pauperis if it is frivolous, malicious, or fails to state a claim upon which relief can be granted. To state a claim for relief under § 1983, a complaint must plead more than “legal conclusions” and “[t]hreadbare recitals of the elements of a cause of action [that are] supported by mere conclusory statements.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A plaintiff must demonstrate a plausible claim for relief, which is more than a “mere possibility of misconduct.” *Id.* at 679. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 678. Determining whether a complaint states a plausible claim for relief [is] a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. *Id.* at 679.

## Discussion

Plaintiff brings this action for judicial review of a request for documents under FOIA. He says that he requested a copy of a file relating to an investigation at USP Terre Haute that was conducted while he was imprisoned there.

Plaintiff alleges that the FBI acknowledged receipt of his request and assigned it a 2015 claim number. He does not state that the FBI provided him with a decision, and he does not state whether he exhausted administrative remedies from a denial of his request.

Before bringing a FOIA claim in federal court, a plaintiff must have exhausted the available administrative remedies. E.g., Brumley v. U.S. Dept. of Labor, 767 F.2d 444, 445 (8th Cir. 1985). Additionally, to properly plead a case under FOIA, a plaintiff must allege in his complaint that “he exhausted his remedies under FOIA.” Scherer v. Balkema, 840 F.2d 437, 443 (7th Cir. 1988). “In the absence of such an allegation, he states no claim upon which relief can be granted.” Id. Because he has not alleged that he has exhausted available administrative remedies, the complaint fails to state a claim upon which relief can be granted. As a result, this action is dismissed under 28 U.S.C. § 1915(e).

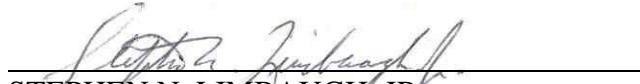
Accordingly,

**IT IS HEREBY ORDERED** that plaintiff's motion to proceed in forma pauperis [ECF No. 2] is **GRANTED**.

**IT IS FURTHER ORDERED** that this action is **DISMISSED** without prejudice.

An Order of Dismissal will be filed separately.

Dated this 24<sup>th</sup> day of November, 2015.

  
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STEPHEN N. LIMBAUGH, JR.  
UNITED STATES DISTRICT JUDGE