

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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MARCUS ANTHONY MICOLO,

Plaintiff,

-against-

MEMORANDUM & ORDER  
16-CV-5635 (JS) (AKT)

SEAN O'NEILL, Chief, Administrative  
Appeals Staff,

Defendant.

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APPEARANCES

For Plaintiff: Marcus Anthony Micolo  
03-A-3985, pro se  
Clinton Correctional Facility  
P.O. Box 2001  
Dannemora, NY 12929

For Defendant: No appearance.

SEYBERT, District Judge:

On October 3, 2016, incarcerated pro se plaintiff Marcus Anthony Micolo ("Plaintiff") filed a Complaint in this Court pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(B) ("F.O.I.A."), against Sean O'Neill, Chief, Administrative Appeals Staff of the U.S. Department of Justice, Office of Information Policy ("O'Neill"). Accompanying the Complaint is an application to proceed in forma pauperis. However, Plaintiff did not file the required Prisoner Authorization Form ("Form"). Accordingly, by Notice of Deficiency dated October 13, 2016, Plaintiff was instructed to complete and return the enclosed Form within fourteen (14) days in order for his Complaint to proceed. On October 25, 2016, Plaintiff timely complied with the Notice of Deficiency and filed the completed Form. (See Docket Entry 8.)

Upon review of the declarations in support of the application to proceed in forma pauperis, the Court finds that Plaintiff is qualified to commence this action without prepayment of the filing fee. See 28 U.S.C. § 1915(a)(1). Therefore, Plaintiff's request to proceed in forma pauperis is GRANTED.

However, because FOIA grants district courts jurisdiction to enjoin an agency from withholding agency records that have allegedly been improperly withheld from Plaintiff, 5 U.S.C. § 552(a)(4)(B) (emphasis added), "[i]ndividual federal officials are not proper defendants in a FOIA action because it is the agency's responsibility to produce records." Jefferson v. Reno, 123 F. Supp. 2d 1, 3 (D. D.C. 2000) (emphasis in original); see also Brown v. U.S. Dept. of Justice, 734 F. Supp. 2d 99, 102 (D. D.C. 2010). Thus, the Department of Justice is the proper agency Defendant for purposes of this action. Accordingly, the Complaint is sua sponte DISMISSED as against O'Neill and DEEMED AMENDED to name the Department of Justice as the sole Defendant.

The Clerk of the Court is directed so amend the caption of the Complaint, to forward a copy of the Summons, Complaint, and this Order to the United States Marshal Service for service upon the Department of Justice without prepayment of fees, and to serve notice of entry of this Order in accordance with Rule 77(d)(1) of the Federal Rules of Civil Procedure by mailing a copy of this Order to the pro se Plaintiff at his last known address. See FED.

R. Civ. P. 5(b)(2)(c).

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore in forma pauperis status is DENIED for the purpose of any appeal. See Coppedge v. United States, 369 U.S. 438, 444-45, 82 S. Ct. 917, 8 L. Ed. 2d 21 (1962).

SO ORDERED.

/s/ JOANNA SEYBERT  
Joanna Seybert, U.S.D.J.

Dated: February 7, 2017  
Central Islip, New York