

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

PERCY EDWARD MOORE,

Plaintiff,

ORDER

v.

10-cv-580-bbc

FEDERAL BUREAU OF INVESTIGATION,
BUREAU OF PRISONS,
CENTRAL INTELLIGENCE AGENCY,
EXECUTIVE OFFICE OF THE PRESIDENT,
U.S. PAROLE COMMISSION and
EXECUTIVE OFFICE FOR U.S. ATTORNEYS, Criminal Division,

Defendants.

This is a proposed civil action brought under the Freedom of Information Act. 5 U.S.C. § 552. Plaintiff Percy Edward Moore contends that the each of the federal agencies named in the caption has violated the act by failing to respond to requests to produce the following information:

All files that contain the name Percy Edward Moore, all investigative, medical criminal files[;] if any files are exempt, state exact number of those exempted files[;] all reports, documents recording, videos[;] if any are exempted[,] list total amount in pages, etc.

Plaintiff has made an initial partial payment in accordance with 28 U.S.C. § 1915(b)(1). Because plaintiff is a prisoner, the 1996 Prison Litigation Reform Act requires the court to deny leave to proceed if the prisoner's complaint is legally frivolous, malicious, fails to state a claim upon which relief may be granted or seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B).

I conclude that plaintiff has stated a claim upon which relief may be granted. The Freedom of Information Act provides that, “the district court . . . has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” 5 U.S.C. § 552(a)(4)(B). It seems that each of the defendants named in the complaint is an agency subject to the requirements of the Act. U.S. Dept. of Justice v. Julian, 486 U.S. 1, 10 (1988) (Parole Commission); CIA v. Sims, 471 U.S. 159 (1985); FBI v. Abramson, 456 U.S. 615 (1982); Kissinger v. Reporters Committee for Freedom of the Press, 445 U.S. 136, 156 (1980) (“The FOIA does render the ‘Executive Office of the President’ an agency subject to the Act.”); Sample v. Bureau of Prisons, 466 F.3d 1086 (D.C. Cir. 2006); Johnson v. Executive Office for U.S. Attorneys, 310 F.3d 771, 774 (D.C. Cir. 2002).

Although the statute permits courts to compel production of documents only when they have been improperly withheld, the burden is on the agency to demonstrate that the records do not have to be produced. The requester has no burden to disprove these

propositions. Department of Justice v. Tax Analysts, 492 U.S. 136, 142 n.3 (1989); 5 U.S.C. § 552(a)(3)(A). See also United States Dept. of State v. Ray, 502 U.S. 164, 173 (1991) (The “strong presumption in favor of disclosure [under the Freedom of Information Act] places the burden on the agency to justify the withholding of any requested documents.”).

At this stage in the proceedings, I cannot determine whether plaintiff has sufficiently identified the records he seeks so that defendants may comply with his request, § 552(a)(3)(A), and whether the records are not subject to one of the exemptions for disclosure under § 552(b). Accordingly, I will allow plaintiff to proceed on his claims. If any of the defendants believes that disclosure is not required for any reason, it may raise these arguments at the appropriate time. Plaintiff is advised that the relief he may receive is limited to an order requiring defendants to produce the records he seeks. 5 U.S.C. § 552(a)(4)(B).

ORDER

IT IS ORDERED that

1. Plaintiff Percy Edward Moore is GRANTED leave to proceed on his claim that defendants Federal Bureau of Investigation, Central Intelligence Agency, Executive Office of the President, U.S. Parole Commission, Executive Office for U.S. Attorneys and the Bureau

of Prisons are violating his rights under the Freedom of Information Act by failing to produce his requested documents.

2. In accordance with Fed. R. Civ. P. 4(i), a completed summons form and copy of this order and plaintiff's complaint are being sent via certified mail to each defendant, the United States Attorney for the Western District of Wisconsin and the United States Attorney General.

3. For the remainder of this lawsuit, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer who will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendants or to defendants' attorney.

4. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of documents.

5. Plaintiff is obligated to pay the unpaid balance of his filing fee in monthly payments as described in 28 U.S.C. § 1915(b)(2). The clerk of court is directed to send a letter to the warden of plaintiff's institution informing the warden of the obligation under Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), to deduct payments from plaintiff's trust

fund account until the filing fee has been paid in full.

Entered this 14th day of December, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge