

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

MILFORD SLADER,

Petitioner,

v.

FEDERAL BUREAU OF PRISONS,
United States Department of Justice and
GINGER JONES, Administrator,
Health Service Division,

Respondents.

ORDER

05-C-382-C

This is a proposed civil action brought under the Freedom of Information Act, 5 U.S.C. § 552 and the Privacy Act, 5 U.S.C. § 552a. Petitioner Milford Slader contends that respondents Federal Bureau of Prisons and Ginger Jones have violated these statutes by failing to comply with his request for certain medical records. Petitioner asks for leave to proceed under the in forma pauperis statute, 28 U.S.C. § 1915. From the financial affidavit petitioner has given the court, I conclude that petitioner is financially unable to prepay the full fees and costs of starting this lawsuit. Petitioner has submitted the initial partial payment required under § 1915(b)(1).

In addressing any pro se litigant's complaint, the court must construe the complaint liberally. Haines v. Kerner, 404 U.S. 519, 521 (1972). However, if the litigant 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).

From his complaint and the attached documents, I understand petitioner to be alleging the following.

ALLEGATIONS OF FACT

Petitioner Milford Slader is currently incarcerated at the Federal Correctional Institution in Oxford, Wisconsin. Respondent Federal Bureau of Prisons is an agency of the United States Department of Justice. Respondent Ginger Jones is the Health Services Administrator at the Federal Correctional Institution in Oxford.

In a request dated April 14, 2005 and addressed to "Medical Records," petitioner asked for copies of the following documents:

Dr. Reed's medical reports, diagnostical reports, medical references, photo's and x-rays of left foot from March 1, 2003 to April 17, 2003.

Doctor's medical reports, diagnostical reports, medical referrals, x-rays, photo's of left and right foot from April 17, 2003 to September 1, 2004.

Petitioner requested these documents because he intends to file a civil rights action against medical personnel at the institution and needs the documents to prove a violation of his Eighth Amendment protection against cruel and unusual punishment. In his request, petitioner indicated that portions of his medical records had been released to him but that they were inaccurate. Petitioner did not receive a response to his request. On May 17, 2005, petitioner sent a letter to the Federal Bureau of Prisons, Office of General Counsel. In the letter, petitioner stated that he had made a request for the medical records on April 14, 2005 and that he received a response from the institution's medical department on April 15, 2005 indicating that his request had been received. Petitioner stated further that on May 10, 2005, he attempted to resolve the matter through the "BOP Grievance Remedy" but that he was unsuccessful because he had "created unnecessary paper work."

DISCUSSION

A. Freedom of Information Act and Privacy Act

Petitioner requests an order from this court compelling defendants to produce the records described above for inspection and copying. The Freedom of Information Act provides that a 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). Under the Privacy Act, an individual may file a civil

action when an agency has failed to comply with a request “to gain access to his record or to any information pertaining to him which is contained in the system.” 5 U.S.C. §§ 552a(d)(1) and (g)(1)(B).

Respondent Jones will be dismissed from this case because claims under the Freedom of Information Act and Privacy Act may be brought only against agencies that hold requested records. Petrus v. Bowen, 833 F.2d 581, 582 (5th Cir. 1987); Brown-Bey v. United States, 720 F.2d 467, 469 (7th Cir. 1983). I cannot say that there is no set of facts consistent with petitioner’s allegations that would entitle him to relief against respondent Federal Bureau of Prisons. Although I cannot determine whether the records petitioner seeks fall within the meaning of “agency records” under § 552(a)(4)(B) or are part of respondent’s “system of records” within the meaning of §§ 552a(d) and (a)(5), whether petitioner has sufficiently identified the records he seeks to allow respondent to 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) or §§ 552a(j) and (k), if respondent believes that disclosure is not required for these or any other reason, it may raise these arguments at the appropriate time. For now, I will allow petitioner to proceed on his claim.

B. Motion for Protective Order

Along with his complaint, petitioner submitted a document entitled “Motion for

Protective Order” which I construe as a motion for an order enjoining defendants preliminarily from retaliating against plaintiff for filing this lawsuit. Petitioner’s motion will be denied. If petitioner believes that he has been the victim of unlawful retaliation for exercising his right of access to the courts, he may raise that claim in a new lawsuit.

ORDER

IT IS ORDERED that

1. Petitioner Milford Slader is GRANTED leave to proceed under 28 U.S.C. § 1915 on his claim that respondent Federal Bureau of Prisons violated his rights under the Freedom of Information Act and the Privacy Act when it failed to turn over accurate copies of the medical records he requested;

2. Respondent Ginger Jones is DISMISSED from this case;

3. Petitioner’s “Motion for Protective Order” is DENIED;

4. The unpaid balance of petitioner's filing fee is \$ 230.88; this amount is to be paid in monthly payments according to 28 U.S.C. § 1915(b)(2).

5. The clerk of court will forward completed Marshals Service and summons forms to the U.S. Marshal, who will serve petitioner’s complaint on respondent Federal Bureau of Prisons, the United States Attorney for the Western District of Wisconsin and the United States Attorney General as required by Fed. R. Civ. P. 4(i)(2)(A). For the remainder of this

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

6. Petitioner 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 his documents.

Entered this 29th day of July, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge