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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

YOUNES YASSEIN,

Plaintiff,

v.

EL PASO INTELLIGENCE CENTER, et
al.,

Defendant.

Case No.: 21-cv-1530-GPC-MDD

**ORDER GRANTING DEFENDANT’S
MOTION TO DISMISS**

On October 7, 2021, on behalf of all named Defendants, the United States Department of Justice (“Defendant”) filed a Motion to Dismiss Plaintiff’s Complaint pursuant to Federal Rule of Civil Procedure (“Rule”) 12(b)(6). ECF No. 10. After considering the applicable law and the parties’ filings, the Court finds this matter suitable for disposition on the papers and GRANTS the Defendant’s Motion to Dismiss and VACATES the hearing date set for this matter on November 19, 2021.

I. BACKGROUND

On August 30, 2021, Plaintiff Younes Yassein (“Plaintiff”), proceeding *pro se*, filed a “Freedom of Information Act Complaint” in which Plaintiff seeks to “discover if a law enforcement officer in Colorado offered a false instrument for filing by ascertaining whether or not that officer actually filed a document that he claimed he did.” ECF No. 1

1 at 1. Although the Complaint is not absolutely clear, it appears that the Complaint stems
2 from an alleged search and seizure by a “state law enforcement officer” named Mike
3 Miller. *Id.* at 3. According to the Complaint, Officer Miller stopped Plaintiff, presumably
4 while Plaintiff was in his car, and searched Plaintiff’s passenger compartment. *Id.* Officer
5 Miller then ran Plaintiff’s information through the “El Paso Intelligence Center (EPIC)
6 [and] [d]uring the check, [Miller] was informed that [Plaintiff] had an active DEA drug
7 related [sic] case.” *Id.*

8 Plaintiff asserts that there was not such an “active case” and contends that Officer
9 Miller therefore “committed a felony in his report” by stating that an active case existed
10 based on the check. *Id.* Plaintiff further alleges that “Plaintiff does not believe such a
11 report was ever filed.” *Id.* It is not clear from the Complaint what “report” Plaintiff is
12 referring to, nor is there a “request” by Plaintiff attached to the Complaint despite
13 Plaintiff’s statement that the “request” is attached as Exhibit A. Plaintiff’s Complaint
14 then moves to a section called “Legal Claims,” which contains Plaintiff’s rebuttals to
15 what he appears to anticipate as the Defendant’s arguments regarding the “law
16 enforcement exemption” to a FOIA request. *Id.* at 4. Finally, Plaintiff moves this Court to
17 order the Defendants to produce “the information requested,” though it is not clear
18 precisely what information Plaintiff seeks. *Id.* at 6.

19 Defendant, the United States Department of Justice, on behalf of all named
20 Defendants, moves to dismiss the Complaint pursuant to Rule 12(b)(6) because Plaintiff
21 has failed to allege facts supporting the elements of a FOIA claim, and because Plaintiff
22 has failed to exhaust administrative remedies. ECF No. 10 at 2.

23 **II. DISCUSSION**

24 **A. Legal Standard: Dismissal Pursuant to Rule 12(b)(6)**

25 A motion to dismiss pursuant to Rule 12(b)(6) tests the legal sufficiency of a
26 complaint, i.e., whether the complaint lacks either a cognizable legal theory or facts
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1 sufficient to support such a theory. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).
2 “To survive a motion to dismiss, a complaint must contain sufficient factual matter,
3 accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*,
4 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570)
5 (2007) (internal quotation marks omitted)). “A claim has facial plausibility when the
6 plaintiff pleads factual content that allows the court to draw the reasonable inference that
7 the defendant is liable for the misconduct alleged.” *Id.* The court accepts factual
8 allegations in the complaint as true and construes the pleadings in the light most
9 favorable to the nonmoving party. *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d
10 1025, 1031 (9th Cir. 2008). However, the court is not bound to accept mere legal
11 conclusions as true. *Iqbal*, 556 U.S. at 678. “In sum, for a complaint to survive a motion
12 to dismiss, the non-conclusory factual content, and reasonable inferences from that
13 content, must be plausibly suggestive of a claim entitling the plaintiff to relief.” *Moss v.*
14 *U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (internal quotation marks omitted).
15 When ruling on a motion to dismiss, courts consider the complaint itself in its entirety, as
16 well as documents incorporated into the complaint by reference, and matters of which a
17 court may take judicial notice. *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308,
18 322 (2007). Dismissal without leave to amend is improper unless it is clear that
19 amendment is futile. *Manzarek*, 519 F.3d at 1031.

20 **B. Sufficiency of Plaintiff’s Complaint as a Freedom of Information Act**
21 **(FOIA) Claim**

22 Plaintiff’s Complaint is styled as a FOIA claim, and the Court interprets it as such
23 based on the Complaint’s caption and ultimate request for relief. ECF No. 1 at 6 (moving
24 the Court to order that Defendants produce information).
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1 “The basic purpose of FOIA is to ensure an informed citizenry, vital to the
2 functioning of a democratic society, needed to check against corruption and to hold the
3 governors accountable to the governed.” *NLRB v. Robbins Tire & Co.*, 437 U.S. 214, 242
4 (1978). When a person requests a record from a federal agency and the agency
5 improperly withholds the record, the requester may bring suit in district court to enjoin
6 the agency from withholding the record, and the district court may order the production
7 of any records improperly withheld. 5 U.S.C. § 552(a)(4)(B); *U.S. Dep’t of Justice v.*
8 *Reporters Comm. For Freedom of the Press*, 489 U.S. 749, 755 (1989). “To successfully
9 assert a FOIA claim, the plaintiff must show ‘that an agency has: (1) improperly; (2)
10 withheld; (3) agency records. A district court’s authority to implement judicial remedies
11 and order the production of improperly withheld documents can only be invoked if the
12 agency has violated *all* three requirements.” *Rojas-Vega v. Cejka*, No. 09-cv-2489-BEN,
13 2010 WL 1541369, at *3 (S.D.Cal. Apr. 15, 2010) (emphasis in original) (internal
14 quotation marks omitted) (quoting 5 U.S.C. § 552). A plaintiff must exhaust
15 administrative remedies before seeking judicial review. *Benhoff v. United States Dep’t of*
16 *Justice*, 2016 WL 6962859, at *2 (S.D.Cal. Nov. 29, 2016) (citing *In re Steele*, 799 F.2d
17 461, 465 (9th Cir. 1986)). In other words, a plaintiff must show that the request was made
18 and improperly refused before that party can bring a court action. *Id.* (citing 5 U.S.C.
19 § 552(a)(1), (2), & (3)). “If a plaintiff has not complied with the exhaustion procedures,
20 district courts lack jurisdiction over the claim under the exhaustion doctrine and will
21 dismiss the claim for lack of subject matter jurisdiction.” *Id.* (citing *Steele*, 799 F.2d at
22 466).

23 Even taking all the allegations in the Complaint as true and viewing them in the
24 light most favorable to Plaintiff as the non-moving party, the Court finds that Plaintiff’s
25 Complaint fails to state a plausible claim of entitlement to relief under FOIA. As a
26 threshold matter, it is not clear from Plaintiff’s Complaint what documents Plaintiff is
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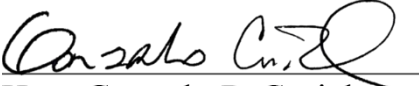
1 requesting. The Complaint also does not establish whether Plaintiff submitted a request
2 for information of any kind to any federal agency in the first place. Finally, the
3 Complaint does not assert that any document was improperly withheld following such a
4 request. Because the Complaint lacks clear and sufficient legal or factual allegations
5 supporting any plausible entitlement to relief, Plaintiff has failed to state a claim that can
6 survive a Rule 12(b)(6) motion to dismiss. Relatedly, Plaintiff has not shown that this
7 Court would have subject matter jurisdiction over the claim because it is not clear that
8 Plaintiff has exhausted administrative remedies, as discussed above. Any Amended
9 Complaint should clearly assert whether this Court can exercise subject matter
10 jurisdiction over Plaintiff's claim based on proper administrative exhaustion.

11 **III. CONCLUSION**

12 The Court HEREBY GRANTS Defendant's Motion to Dismiss and HEREBY
13 DISMISSES WITHOUT PREJUDICE Plaintiff's Complaint. Plaintiff has leave to file a
14 First Amended Complaint correcting the deficiencies noted above. The First Amended
15 Complaint must be filed, if at all, on or before December 1, 2021.

16 **IT IS SO ORDERED.**

17 Dated: November 2, 2021

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19 Hon. Gonzalo P. Curiel
20 United States District Judge