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WILLIE LEE DAVIS GETER,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 08-1863 (RWR)
)	
CYNTHIA SYDNOR <i>et al.</i>,)	
)	
Defendants.)	
)	

Plaintiff Willie Lee Davis Geter filed this *pro se* complaint under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). Defendants filed a motion to dismiss the complaint or to grant summary judgment. By Order dated December 11, 2008, the plaintiff was advised of his obligations to respond to the motion, and was warned that failure to respond by January 22, 2009 could result in facts alleged by the defendant being treated as admitted and the motion being treated as conceded. Because the plaintiff has not responded, the facts set forth in the defendants’ statement of material facts will be treated as admitted, as authorized by Local Civil Rule 7(h), and the complaint will be dismissed for failure to state a claim upon which relief may be granted.

Along with the dispositive motion, the defendants filed a statement of material facts supported by a sworn statement by an agency official. The statement of material facts establishes, among other things, that defendants responded to the plaintiff's FOIA request by letter, advising that they did not maintain the records plaintiff was seeking and further advising him of his appeal rights. (Def.'s Stmt. of Mat. Facts ¶¶ 7-8.) The statement of material facts

also establishes that the plaintiff did not pursue his appeal rights. (*Id.* ¶ 9.) Because a precondition of filing a civil action filed under the FOIA is the prior exhaustion of administrative remedies, the complaint in this action fails to state a claim upon which relief may be granted. *See Jones v. U.S. Dep't of Justice*, 576 F. Supp. 2d 64, 66 (D.D.C. 2008) (stating that failure to exhaust in a FOIA case “is properly the subject of a motion brought under Rule 12(b)(6) for failure to state a claim upon which relief may be granted.”). Accordingly, it is hereby

ORDERED that the motion to dismiss the complaint be, and hereby is, GRANTED. The complaint is DISMISSED for failure to state a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2)(B)(ii).

This is a final, appealable order. *See* Fed. R. App. P. 4.

SIGNED this 9th day of February, 2008.

/s/

RICHARD W. ROBERTS
United States District Judge