

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

Thomas Martin Sukup,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No.: 02-0355 (RMU)
	:	
	:	Document No.: 65
Executive Office for	:	
United States Attorneys,	:	
	:	
Defendant.	:	

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**MEMORANDUM OPINION**

**RESOLVING THE REMANDED ISSUE AND DENYING THE PLAINTIFF’S MOTION FOR  
ATTORNEY’S FEES AND COSTS**

The United States Court of Appeals for the District of Columbia Circuit remanded this Freedom of Information Act (“FOIA”) case for further consideration of the defendant’s application of FOIA exemption 7(C) to information redacted from document numbers 35 and 43. In addition, the plaintiff has moved for attorney’s fees and costs. The court will address the remanded issue and then the plaintiff’s motion for fees and costs, which will be denied.

**A. The Defendant Properly Invoked Exemption 7(C)**

Based on the defendant’s *in camera* submission of the redacted and unredacted pages and the explanations set forth in the Fourth Declaration of John F. Boseker, the court determines that the defendant properly redacted the bulk of information from documents 35 and 43 pursuant to FOIA exemption 7(C), and released all reasonably segregable information. Mr. Boseker has satisfactorily explained that any further disclosures would permit the plaintiff to identify the third-party individuals mentioned in the law enforcement documents. Because such information

is categorically exempt in the absence of a showing, not made here, of an overriding public interest, *Nation Magazine, Washington Bureau v. United States Customs Service*, 71 F.3d 885, 896 (D.C. Cir. 1995), the defendant's withholdings are proper.

**B. The Court Denies the Plaintiff's Motion for Attorney's Fees and Litigation Costs**

*Pro se* plaintiffs may not recover attorney's fees under the FOIA. *Burka v. United States Dep't of Health and Human Services*, 142 F.3d 1286, 1288 (D.C. Cir. 1998). The FOIA allows a district court to "assess against the United States reasonable . . . litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed." 5 U.S.C. § 552(a)(4)(E). Plaintiff is not eligible to recover costs because he did not substantially prevail insofar as he was not "awarded . . . relief . . . either in a judgment on the merits or in a court-ordered consent decree." *Oil, Chemical and Atomic Workers International Union, AFL-CIO v. Department of Energy*, 288 F.3d 452, 456-57 (D.C. Cir. 2002) (citation and internal quotation marks omitted).

For the foregoing reasons, the court dismisses the case and denies the plaintiff's motion for fees or costs. An order consistent with this Memorandum Opinion is separately and contemporaneously issued this 23rd day of August 2007.

RICARDO M. URBINA  
United States District Judge