

<sup>1</sup> Arguing that the defendant failed to exhaust his administrative remedies, the motion mistakenly invokes Fed. R. Civ. P. 12(b)(1) as its basis, a rule used for challenging subject matter jurisdiction. The exhaustion requirement under the FOIA is “a jurisprudential doctrine” rather than a jurisdictional prerequisite. *Hidalgo v. FBI*, 344 F.3d 1256, 1258-59 (D.C. Cir. 2003). The FBI’s supporting memorandum properly invokes Rule 12(b)(6).

115, 120 (4th Cir.), *cert. denied*, 518 U.S. 1032 (1995)). Because payment is required “[r]egardless of whether the plaintiff ‘filed’ suit before or after receiving a request for payment,” *Trueblood*, 943 F. Supp. at 68, plaintiff will be required to pay the assessed fee before obtaining judicial review of unfavorable action. *Smith v. Federal Bureau of Prisons*, 517 F. Supp.2d 451, 455 (D.D.C. 2007) (Roberts, J.).<sup>2</sup> Therefore, since matters outside the pleadings have been considered, *see* Fed. R. Civ. P. 12(d), the FBI is entitled to judgment as a matter of law.<sup>3</sup> A separate Order accompanies this Memorandum Opinion.

DATE: May 12, 2008

\_\_\_\_\_/s/\_\_\_\_\_  
RICHARD W. ROBERTS  
United States District Judge

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<sup>2</sup> *Smith*, though, mistakenly cited a pre-*Hidalgo* district court opinion that characterized the failure to pay the assessed fee as a jurisdictional bar. Likewise, *Hidalgo* has overtaken *Trueblood*’s characterization of the failure to pay the fee as jurisdictional.

<sup>3</sup> The complaint against all other defendants was dismissed by Order of February 27, 2008 [Dkt. No. 25].