

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

FELIX CRUZ,)	
)	
Plaintiff,)	
)	
v.)	Civ. Action No. 15-1977 (RMC)
)	
EXECUTIVE OFFICE FOR)	
UNITED STATES ATTORNEYS,)	
)	
Defendant.)	

MEMORANDUM OPINION

Felix Cruz, appearing *pro se*, brought this lawsuit under the Freedom of Information Act (FOIA) “to compel disclosure . . . of the documentary evidence and documentary memorialization of statements and testimony given [regarding certain paragraphs] of the Presentence Investigation Report of my criminal case.” Compl. [Dkt. 1] at 1. Defendant Executive Office for United States Attorneys (EOUSA), to which Mr. Cruz addressed his request in April 2015, has moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. *See* Mot. [Dkt. 25]. Mr. Cruz has not filed an opposition by the latest deadline of May 19, 2017, despite having been warned that his failure to respond timely, and in accordance with Rule 56, might result in the Court’s entering judgment for EOUSA on its undisputed factual assertions. *See* Order [Dkt. 26]. In addition, Mr. Cruz has not requested additional time to respond. Accordingly, the Court will grant EOUSA’s motion for the following reasons.

In summary judgment proceedings, the Court may grant a properly supported motion “if the movant shows [through facts supported in the record] that there is no genuine

dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). In doing so, the Court “should state on the record the reasons for granting . . . the motion.” *Id.* Summary judgment is the frequent vehicle for resolution of a FOIA action because the pleadings and declarations in such cases often provide undisputed facts on which the moving parties are entitled to judgment as a matter of law. *McLaughlin v. DOJ*, 530 F. Supp. 2d 210, 212 (D.D.C. 2008) (citations omitted). Agencies may rely on affidavits or declarations of government officials, as long as they are sufficiently clear and detailed and submitted in good faith. *Id.* (citing *Oglesby v. U.S. Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)). The Court may award summary judgment solely on the basis of information provided in such affidavits or declarations when they describe “the documents and the justifications for nondisclosure with reasonably specific detail . . . and are not controverted by either contrary evidence in the record nor by evidence of agency bad faith.” *Military Audit Project v. Casey*, 656 F.2d 724, 738 (D.C. Cir. 1981).

Under 56(e), “[i]f a party fails to . . . properly address another party’s assertion of fact as required by Rule 56(c), the court may: (1) give an opportunity to properly . . . address the fact; (2) consider the fact undisputed . . . [or] (3) grant summary judgment if the motion and supporting materials . . . show that the movant is entitled to it.” Fed. R. Civ. P. 56(e). Mr. Cruz has had opportunities to address EOUSA’s asserted facts, which are properly supported by the Declarations of David Luczynski and David M. Hardy and accompanying exhibits. *See* Declaration of David Luczynski [Dkt. 25-2] ¶¶ 5-15; Declaration of David M. Hardy [Dkt. 25-2]. Moreover, Mr. Cruz’s complaint is premised on EOUSA’s decision to withhold records solely under FOIA Exemption 7(A), but that decision has been rendered moot by the actions for which EOUSA now seeks summary judgment.

