

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

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|-------------------|---|--------------------------------------|
| LEWIS ROSS BROWN, |) | |
| |) | |
| Plaintiff, |) | |
| |) | Civil Action No. 1:23-cv-03328 (UNA) |
| v. |) | |
| |) | |
| MICHAEL REGAN, |) | |
| |) | |
| |) | |
| Defendant. |) | |

MEMORANDUM OPINION

This matter is before the Court on its initial review of Plaintiff’s *pro se* complaint, ECF No. 1, and application for leave to proceed *in forma pauperis*, ECF No. 2. The Court will grant the *in forma pauperis* application and, for the reasons explained below, it will dismiss the case without prejudice.

Plaintiff attempts to sue, pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, the Administrator of the United States Environmental Protection Agency (“EPA”). *See* Compl. at 1–2, 4. However, Plaintiff cannot sue the EPA’s Administrator, because the FOIA authorizes suit only against federal agencies; it does not create a cause of action against individual officials or employees of an agency. *Sherwood Van Lines, Inc. v. U.S. Dep’t of the Navy*, 732 F. Supp. 240, 241 (D.D.C. 1990).

Even if Plaintiff had named a different defendant, his claim would still fail because the only form of relief he seeks—monetary damages, *see* Compl. at 4—is not available. The United States, its agencies, and its officials are immune from damages suits unless that immunity is waived expressly. *United States v. Mitchell*, 445 U.S. 535, 538 (1980). It is Plaintiff’s burden to establish the existence of a waiver, *see, e.g., Hafen v. Pendry*, 646 F. Supp. 2d 159, 160 (D.D.C. 2009), and

the absence of a waiver of sovereign immunity deprives the Court of subject matter jurisdiction, *see FDIC v. Meyer*, 510 U.S. 471, 475 (1994). Here, there is no indication that the government has waived sovereign immunity. In particular, Plaintiff cannot recover damages under the FOIA because “the sole remedy available to a requester [under the FOIA] is injunctive relief.” *Roman v. Nat’l Reconnaissance Off.*, 952 F. Supp. 2d 159, 163–64 (D.D.C. 2013); *accord Pickering-George v. Registration Unit, DEA/DOJ*, 553 F. Supp. 2d 3, 4 (D.D.C. 2008).

Plaintiff thus seeks to sue only defendants that are immune from damages claims and cannot state a claim under the FOIA. The Court will therefore dismiss his complaint and this action without prejudice. *See* 28 U.S.C. § 1915(e)(2)(B)(ii)–(iii). A separate order accompanies this memorandum opinion.

Date: November 22, 2023

/s/ _____
ANA C. REYES
United States District Judge