

**DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

DARREL RIVIERE,

Plaintiff,

v.

**DIRECTOR OF THE PUERTO RICO/UNITED
STATES VIRGIN ISLANDS HIGH INTENSITY
DRUG TRAFFICKING AREAS PROGRAM,**

Defendant.

Civil No. 2012-50

ATTORNEYS:

Darrel Riviere,
United States Prison, Big Sandy -- Inez, KY
Pro se.

ORDER

GÓMEZ, J.

Darrel Riviere ("Riviere") filed a document in this court which he captions as a "Request to Compel Disclosure of Agency Records Pursuant to Freedom of Information Act 5 U.S.C. § 552 and Privacy Act 552(a)."

On April 6, 2012, Riviere requested documents pursuant to the Freedom of Information Act (the "FOIA Request") from the Puerto Rico/Virgin Islands High Intensity Drug Trafficking Areas Program ("HIDTA"). Riviere sent his request to the Director of the HIDTA Task Force at 8195 Subbase, Chinnery Building, St.

Thomas, Virgin Islands, 00802. Riviere alleges that he received no response.

Riviere asks this Court for an injunction compelling the Puerto Rico/Virgin Islands HIDTA to produce the documents he requests.¹

Under FOIA, a district court is authorized to issue an injunction ordering the production of any agency record improperly withheld from a complainant. 5 U.S.C.A. § 552(a)(4)(B). Upon filing of a complaint,

the district court of the United States in the district in which . . . the agency records are situated . . . has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section. . . .

5 U.S.C.A. § 552(a)(4)(B) (West); see also *United States v. Banks*, 313 Fed. Appx. 457, 458 (3d Cir. 2009); see also *North v. Walsh*, 881 F.2d 1088, 1094 (D.C. Cir. 1989).

It is well settled that “[a] civil action is commenced by filing a complaint with the court.” Fed. R. Civ. P. 3. In addition to the filing of a complaint, “[t]he clerk of each

¹ On September 28, 2012, the Department of Justice denied Riviere’s FOIA request. Riviere has since appealed the denial of his FOIA request to the United States Department of Justice Office of Information Policy, an agency responsible for encouraging agency compliance with FOIA.

district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of \$350” 28 U.S.C.A. § 1914 (West). To the extent that a claimant is unable to pay a filing fee, the court

may authorize the commencement . . . of any . . . action . . . without prepayment of fees . . . by a person who submits an affidavit that includes a statement . . . that the person is unable to pay such fees. . . .

28 U.S.C. § 1915(a)(1). That is, the Court may authorize the person to proceed *in forma pauperis*.

Here, Riviere filed his petition on July 11, 2012. There is no record evidence that Riviere either paid the required filing fee or sought to proceed *in forma pauperis*.

In *Rohn v. Johnston*, 415 F. App'x 353, 354 (3d Cir. 2011), Jamod Khalil Rohn (“Rohn”) filed a civil rights action, but failed to pay the \$350 filing fee or submit a motion to proceed *in forma pauperis*. *Id.* In that case, the Magistrate Judge issued an Order notifying Rohn that he must either pay the filing fee or complete his application to proceed *in forma pauperis* by a date certain. *Id.* Thereafter, Rohn submitted some of the required documents for an application to proceed *in forma pauperis*, but did not complete his application. *Id.* Thereafter, the Magistrate Judge ordered Rohn to show cause why his case should not be dismissed for failing to comply with the order to

pay a filing fee or file a complete application to file *in forma pauperis*. *Id.* Rohn failed to show cause. *Id.* The district court ordered Rohn's action dismissed without prejudice. *Id.* Rohn appealed. *Id.* The United States Court of Appeals for the Third Circuit affirmed. *Id.*

Riviere finds himself in circumstances similar to those presented in *Rohn v. Johnston*, 415 F. App'x 353, 354 (3d Cir. 2011). In that case, the plaintiff was given an opportunity either to cure his failure, either by paying the filing fee or by completing his application to proceed *in forma pauperis*. *Id.* The Court finds that such relief is appropriate here.

Accordingly, it is hereby

ORDERED that, no later than June 4, 2014, Riviere shall pay the Court's filing fee or seek to proceed *in forma pauperis*, failing which this action may be dismissed.

S\ _____
CURTIS V. GÓMEZ
District Judge