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9 **UNITED STATES DISTRICT COURT**  
10 **DISTRICT OF NEVADA**

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13 JED MARGOLIN, )

14 Plaintiff, )

15 v. )

16 )  
17 CHARLES F. BOLDEN, )  
18 Administrator, National Aeronautics and )  
19 Space Administration, and NATIONAL )  
ADMINISTRATION, )

20 Defendants. )  
21

3:09-CV-00421-LRH-VPC

**DEFENDANTS' MOTION TO DISMISS**

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23 COME NOW Defendants National Aeronautics and Space Administration ("NASA") and  
24 NASA Administrator Charles F. Bolden ("Bolden") and move to dismiss Bolden from this  
25 action. This motion is made pursuant to Fed. R. Civ. Proc. 12(b)(1).  
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**ARGUMENT**

**A. Bolden should be dismissed from this action because agency officials are not proper defendants in Freedom of Information Act lawsuits.**

Plaintiff Jed Margolin has sued NASA and Bolden for their alleged failure to provide certain documents requested under the Freedom of Information Act (“FOIA”). But individual agency employees are not proper party defendants in FOIA actions. *Johnson v. Commissioner of Internal Revenue*, 2002 WL 31934162 (W.D. Wash. 2002); *see also* 5 U.S.C. § 552(a)(4)(B) (“[T]he district court of the United States \* \* \* has jurisdiction to enjoin the *agency* from withholding agency records and to order the production of any agency records improperly withheld from the complainant[.]”) (emphasis added); *Hardy v. Daniels*, 2006 WL 176531 (D.Or. 2006) (“[T]he general consensus is that only a federal *agency*, and not federal officials, can be sued under FOIA.”) (emphasis in original). Accordingly, Bolden should be dismissed from this lawsuit.

**CONCLUSION**

For the foregoing reasons, this Court should dismiss NASA Administrator Charles F. Bolden from this action.

Respectfully submitted,

DANIEL G. BOGDEN  
United States Attorney

/s/ Holly A. Vance  
HOLLY A. VANCE  
Assistant United States Attorney

**CERTIFICATE OF SERVICE**

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JED MARGOLIN,	)	
	)	3:09-CV-00421-LRH-VPC
Plaintiff,	)	
	)	
v.	)	
	)	
CHARLES F. BOLDEN,	)	
Administrator, National Aeronautics and	)	
Space Administration, and NATIONAL	)	
AERONAUTICS AND SPACE	)	
ADMINISTRATION,	)	
	)	
Defendants.	)	

The undersigned hereby certifies that service of the foregoing **DEFENDANTS'** **MOTION TO DISMISS** has been made by electronic notification through the Court's electronic filing system or, as appropriate, by sending a copy by first-class mail to the following addressee(s) on September 9, 2009:

JED MARGOLIN  
1981 Empire Road  
Reno, NV 89521-7430

/s/ Holly A. Vance  
Holly A. Vance