

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 31 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ANTHONY P.X. BOTHWELL,

Plaintiff-Appellant,

v.

JOHN O. BRENNAN, Director, Central
Intelligence Agency, United States of
America; CENTRAL INTELLIGENCE
AGENCY,

Defendants-Appellees.

No. 15-17323

D.C. No. 3:13-cv-05439-JSC

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Jacqueline Scott Corley, Magistrate Judge, Presiding**

Submitted January 18, 2017***

Before: TROTT, TASHIMA, and CALLAHAN, Circuit Judges.

Anthony P.X. Bothwell, an attorney, appeals pro se from the district court's

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The parties consented to proceed before a magistrate judge. *See* 28 U.S.C. § 636(c).

*** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

summary judgment in his action alleging violations of the Freedom of Information Act (“FOIA”). We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Animal Legal Def. Fund v. U.S. Food & Drug Admin.*, 836 F.3d 987, 990 (9th Cir. 2016), and we affirm.

The district court properly granted summary judgment on Bothwell’s FOIA requests for records pertaining to Jean Souetre because, even if the articles Bothwell submitted were admissible, they did not establish a genuine dispute of material fact as to whether the Central Intelligence Agency (“CIA”) waived the application of FOIA Exemption 3. *See Pickard v. Dep’t of Justice*, 653 F.3d 782, 786 (9th Cir. 2011) (setting forth criteria for determining whether a fact is deemed “officially acknowledged”). We reject as without merit Bothwell’s contentions regarding redaction of records and the CIA’s alleged error in failing to consider the public interest before invoking Exemption 3.

The district court properly granted summary judgment on Bothwell’s FOIA requests for records pertaining to David Morales because Bothwell did not raise a genuine dispute of material fact as to whether the CIA’s search for responsive records was inadequate. *See Lahr v. Nat’l Transp. Safety Bd.*, 569 F.3d 964, 987-89 (9th Cir. 2009) (concluding that agency’s declarations established that it

conducted searches reasonably calculated to uncover responsive records and the agency's failure to produce or identify a few isolated documents was insufficient to show its searches were inadequate). Bothwell's contentions regarding the CIA's prior disclosure of certain records and alleged error in failing to consider the public interest are inapposite because the CIA did not invoke an exemption in response to Bothwell's FOIA request pertaining to Morales.

AFFIRMED.