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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 MARTA D. LYALL,

10 Plaintiff,

11 v.

12 FEDERAL BUREAU OF INVESTIGATION,

13 Defendant.  
14

Case No. C15-1818RSL

ORDER OF DISMISSAL

15 This matter comes before the Court on defendant's motion to dismiss, Dkt. # 29, and  
16 plaintiff's motion for voluntary dismissal, Dkt. # 36. Having reviewed the motions, the parties'  
17 filings, and the remainder of the record, the Court finds as follows:

18 Plaintiff Marta Lyall filed this action under the Freedom of Information Act (FOIA), 5  
19 U.S.C. § 552, seeking records from the Federal Bureau of Investigation (FBI). Dkt. # 6. For the  
20 requests that yielded results, the FBI proceeded toward producing responsive records. Lyall  
21 requested that the FBI expedite her request, and filed this suit when the FBI declined. Dkt. # 31  
22 ¶¶ 10–13. Under the Court's guidance, the FBI released hundreds of pages of documents, Dkt.  
23 # 31 ¶¶ 16–20, and asserts it has completed production of all responsive records, see Dkt. # 26.

24 The FBI filed a motion to dismiss for lack of subject matter jurisdiction. Dkt. # 29.  
25 Plaintiff failed to respond, and instead filed her own motion to voluntarily dismiss the action.  
26 Dkt. # 36. The FBI's motion asserts the Court lacks subject matter jurisdiction because Lyall  
27 failed to exhaust administrative remedies. The Ninth Circuit recently clarified that "any failure  
28 to exhaust [a FOIA claim] does not bear on the district court's subject matter jurisdiction."

ORDER OF DISMISSAL - 1

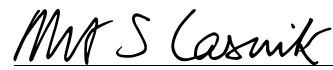
1 Yagman v. Pompeo, 868 F.3d 1075, 1084 (9th Cir. 2017). The Court accordingly concludes that  
2 Lyall's failure to exhaust does not deprive the Court of jurisdiction.

3 For her part, Lyall moves to voluntarily dismiss this action. Dkt. # 36. Under Federal  
4 Civil Rule 41, a party may voluntarily dismiss an action, but if, as here, a defendant has filed an  
5 answer, the action may only be dismissed by order of the Court. Fed. R. Civ. P. 41(a)(2).  
6 Whether to dismiss an action under Rule 41(a)(2), and under what conditions, is committed to  
7 the Court's discretion, In re Exxon Valdez, 102 F.3d 429, 432 (9th Cir. 1996), and the Court has  
8 flexibility to fashion a ruling that fits the circumstances, see Ruiz v. Snohomish Cty. Pub. Util.  
9 Dist. No. 1, 824 F.3d 1161, 1168 (9th Cir. 2016).

10 The Court concludes that Lyall's action should be dismissed without prejudice. The  
11 FBI's motion to dismiss does not ask the Court to reach the underlying merits. The FBI has no  
12 counterclaims that would be prejudiced. The FBI expresses concern that a dismissal without  
13 prejudice risks simply avoiding an adverse ruling or allowing Lyall to shop for a friendlier  
14 forum. Dkt. # 38 at 4. The Court's ruling on the FBI's motion obviates the first concern. As for  
15 the latter concern, the Court will dismiss the action on the condition that should Lyall file a  
16 subsequent federal case arising from the same set of operative facts, the parties must designate it  
17 a "related case," and the new action will be assigned to this Court. The Court is mindful that  
18 some of Lyall's reasons are tenuous, but she simply does not appear committed to prosecuting  
19 this action and the FBI's production of records may well have mooted her claims in any future  
20 case. See Papa v. United States, 281 F.3d 1004, 1013 (9th Cir. 2002) ("[T]he production of all  
21 nonexempt material, however belatedly, moots FOIA claims." (marks and citation omitted)).

22 For the foregoing reasons, the Court concludes that dismissal without prejudice is  
23 warranted. Defendant's motion to dismiss for lack of subject matter jurisdiction, Dkt. # 29, is  
24 DENIED. Plaintiff's motion to voluntarily dismiss this action, Dkt. # 36, is GRANTED. Should  
25 plaintiff file another federal case arising from the same set of operative facts, the parties shall  
26 designate it as a "related case," and the new action will be assigned to this Court. The Clerk is  
27 hereby ORDERED to dismiss the case without prejudice.

1 DATED this 16th day of May, 2018.

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4 Robert S. Lasnik  
5 United States District Judge  
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