

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

HYGIA HEALTH SERVICES, INC.,)

Plaintiff,)

vs.)

Case No.: 2:06-CV-4798-IPJ

UNITED STATES FOOD AND)

DRUG ADMINISTRATION)

Defendant.)

MEMORANDUM OPINION AND ORDER

On March 22, 2007, this court entered a Memorandum Opinion and Order granting summary judgment in favor of the plaintiff, Hygia Health Services, Inc, (“Hygia”) and against the defendant, the United States Food and Drug Administration (“the FDA”). The FDA filed a motion for reconsideration (doc. 30) requesting that the court reconsider its ruling on the motion for summary judgment. The FDA’s motion for reconsideration was filed with a supporting brief (doc. 31) to which Hygia filed a response in opposition (doc. 36). “In the interests of finality and conservation of scarce judicial resources, reconsideration of an order is an extraordinary remedy and is employed sparingly.” *Reuter v. Merrill Lynch, Pierce, Fenner & Smith*, 440 F. Supp. 2d 1256, 1265-1268 (N.D. Ala. 2006). As a general rule, “[a] motion to reconsider is only available when a party presents the court with evidence of an intervening change in controlling law, the availability of new evidence, or the need to correct clear error or manifest injustice.” *Id.* at 1268 (quoting *Summit Medical Center of Alabama, Inc. v. Riley*, 284 F.Supp.2d 1350, 1355 (M.D. Ala. 2003)).

ANALYSIS

The court adopts its findings of fact as set out in its March 22, 2007, Memorandum Opinion (doc. 27). In that Memorandum Opinion, this court found that summary judgment was due to be granted in favor of Hygia because the FDA failed to meet its burden of demonstrating that the Alliance Report was “compiled for law enforcement purposes” within the meaning of Exemption 7 of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552(b)(7). Therefore, this court ordered that the Alliance Report did not fall within Exemption 7 of FOIA and ordered the FDA to release the Alliance Report to Hygia. The FDA now requests that the court reconsider its ruling because, it argues, that this court’s “interpretation of the phrase ‘compiled for law enforcement purposes’ in Exemption 7 of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552(b)(7), is inconsistent with controlling Supreme Court case law.” Def.’s Br. in Supp. of its Mot. for Recons. at p. 1.

The FDA specifically argues that this court’s holding is erroneous under the United States Supreme Court’s holding in *John Doe Agency v. John Doe Corporation*, 493 U.S. 146, 110 S. Ct. 471 (1989). The Supreme Court held in that case that the word “compile” in Exemption 7 does not mean “originally compiled,” and that Exemption 7 “seems readily to cover documents already collected by the Government originally for non-law-enforcement purposes.” *John Doe Agency*, 493 U.S. at 153. Under the holding in *John Doe Agency*, information that is not originally compiled for law enforcement purposes may be withheld under Exemption 7 if it is later recompiled for law enforcement purposes. *Id.* at 153-154. Therefore, although

the Alliance Report was not *originally* generated for law enforcement purposes, it is not automatically excluded from the protection of Exemption 7. However, the FDA still bears the burden of proving that the Alliance Report was compiled for law enforcement purposes at the time that it invoked Exemption 7. *Id.* at 153.

In *John Doe Agency*, the Supreme Court examined the plain language of Exemption 7 to interpret the meaning of the phrase “compiled for law enforcement purposes.” *Id.* The court stated that “[a] compilation, in its ordinary meaning, is something composed of materials collected and assembled from various sources or other documents.” *Id.* (quoting Webster’s Third New International Dictionary 464 (1961) and Webster’s Ninth New Collegiate Dictionary 268 (1983)). *See also Cowles Publ’n Co. v. Pierce County Prosecutor’s Office*, 45 P.3d 620, 623 (Wash. Ct. App. 2002) (noting that Webster’s Third New International Dictionary 464 (1969) defines “‘compile’ as ‘to collect and assemble (written material or items from various sources) into a document or volume [or] to put together.’”); *Church of Scientology of Texas v. I.R.S.*, 816 F. Supp. 1138, 1156 (W.D. Tex. 1993) (“‘Compiled,’ the Supreme Court said, is anything ‘composed of materials collected and assembled from various sources or other documents.’”) (quoting *John Doe Agency*, 493 U.S. at 153).

With respect to the Alliance Report, the FDA has only established that an Alliance employee, on his or her own initiative, transferred the Alliance Report to Larry D. Spears in an email. The FDA has not established that this transfer amounts to the compiling or composing of materials collected and assembled from various

sources. *John Doe Agency*, 493 U.S. at 153. The FDA has not established that it did anything with the Alliance Report that would fall within the plain meaning of the word “compile” as defined by the Supreme Court. The FDA has not established that the Alliance Report was made part of any investigation file related to its inspection of the Hygia facility. There is no evidence to show that Spears provided the Alliance Report to anyone that conducted the investigation of the Hygia facility. Essentially, the FDA has failed to demonstrate that when the Alliance Report was transferred to Spears, that it engaged in “the process of gathering at one time records and information that were generated on an earlier occasion and for a different purpose.” *Id.* at 154. Applying the plain meaning of Exemption 7, which “must be narrowly construed” by the court, *id.* at 152, the court finds that the FDA has failed to establish that the Alliance Report was compiled for law enforcement purposes.

Because the court finds that the FDA has failed to meet its burden of establishing that the Alliance Report was compiled for law enforcement purposes, the FDA’s motion for reconsideration is hereby **DENIED**.

DONE and **ORDERED** this the 11th day of April 2007.



INGE PRYTZ JOHNSON
U.S. DISTRICT JUDGE