



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 22, 2010

Ms. Neera Chatterjee
Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2010-05734

Dear Ms. Chatterjee:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 376727 (OGC # 128583).

The University of Texas Medical Branch at Galveston (the "university") received a request for the requestor's time sheets and leave forms over specified time periods, the requestor's performance evaluations and personnel files, a specified sign-in log, and a specified written reminder.¹ You state the university does not have information responsive to the request for the specified sign-in log.² You state the university has released some of the requested

¹We note that the university asked for and received clarification regarding this request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

²The Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); see also Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

information. You claim that some of the submitted information is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.122 of the Government Code excepts from disclosure “a test item developed by a . . . governmental body[.]” Gov’t Code § 552.122(b). In Open Records Decision No. 626 (1994), this office determined that the term “test item” in section 552.122 includes “any standard means by which an individual’s or group’s knowledge or ability in a particular area is evaluated,” but does not encompass evaluations of an employee’s overall job performance or suitability. *Id.* at 6. The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* Traditionally, this office has applied section 552.122 where release of “test items” might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); ORD 626 at 8.

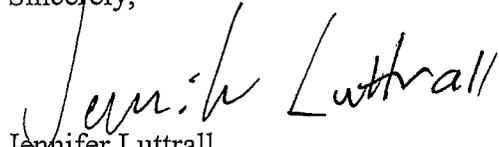
You seek to withhold the questions and answers you have marked under section 552.122 of the Government Code. You state the questions at issue are part of tests “intended to measure the competency of individuals administering dialysis and is required by the Texas Health and Human Services [Commission].” Further, you state “the same questions are administered from year to year” and that release of the information at issue would “compromise the [university’s] ability to test for the dialysis knowledge of its patient technicians.” You also represent that release of the answers to the marked questions would reveal the questions themselves. Having reviewed the submitted information, we find that the questions you have marked evaluate an individual’s specific knowledge or ability in a particular area, thus, qualifying as “test items” under section 552.122(b) of the Government Code. We also find that release of the answers to these test items would tend to reveal the questions themselves. Therefore, the university may withhold the questions you have marked, as well as the answers to those questions, pursuant to section 552.122(b). As you raise no further exceptions, the remaining information, consisting of the titles of the tests and the identifying information of the individual being tested, must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 376727

Enc. Submitted documents

c: Requestor
(w/o enclosures)