



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 20, 2011

Ms. Myrna S. Reingold  
County of Galveston  
Legal Department  
722 Moody, 5<sup>th</sup> Floor  
Galveston, Texas 77550-2317

OR2011-01009

Dear Ms. Reingold:

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# 406333.

The Galveston County Health District (the "district") received a request for: (1) the employment file for the requestor's client; (2) "all documents, tapes, interview notes surrounding [the district's] meeting with [the requestor's client;]" and (3) all documents that were transmitted to the Texas Department of State Health Services ("DSHS"). You state you have released some information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code 552.101. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 773.0612 of the Health and Safety Code. Subchapter C of the Emergency Medical Services Act, chapter 773 of the Health and Safety Code, governs the licensing, certification, and qualifications of emergency medical services personnel. *See* Health & Safety Code § 773.041 *et seq.* Section 773.0612 provides in part that "[a] report, record, or working paper used or developed in an

investigation under this section is confidential and may be used only for purposes consistent with the rules adopted by the [Texas Board of Health].” *Id.* § 773.0612(b).

You explain that the information you seek to withhold pertains to a complaint that was submitted to the EMS Compliance Group of DSHS. You inform us that the complaint involves the conduct of an emergency medical technician. You state that DSHS is investigating the complaint, which DSHS considers to be confidential. Based on your representations and our review of the information at issue, we find that the information you have marked constitutes reports, records, or working papers used or developed in an investigation under section 773.0612 of the Health and Safety Code. We therefore conclude that the information you have marked is confidential under section 773.0612(b) and must be withheld on that basis under section 552.101 of the Government Code.<sup>1</sup>

Section 552.122 of the Government Code excepts from public 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 inform us that the remaining information is an examination created and used by the district to determine whether individuals have the ability and knowledge base to effectively satisfy the demands of a certain position. You also state the district continues to administer the exam, and thus, releasing the exam questions and their answers would compromise its effectiveness in the future. Based on your representations and our review of the submitted information, we find that the submitted exam questions constitute “test items” under section 552.122(b) and the release of these questions would compromise the effectiveness of future examinations. We also find that the release of the answers to these questions would tend to reveal the questions themselves. Accordingly, we conclude the district may withhold the submitted questions and their corresponding answers under section 552.122(b) of the Government Code.

In summary, the district must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 773.0612 of the Health

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<sup>1</sup>As our ruling is dispositive, we need not address your argument under section 552.117 of the Government Code.

and Safety Code. The district may withhold the submitted questions and their corresponding answers under section 552.122(b) of the Government Code.

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](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,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/em

Ref: ID# 406333

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)