



Evaluating Tests – How Did it Work?

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**PENNSYLVANIA HUMAN
RELATIONS COMMISSION**

Promoting Equal Opportunity

Testing Forms Are Confidential Documents



1. Forms should be complete and legible.
 2. All information should be shared only by a tester, the testing supervisor and the evaluator (if latter 2 are different).
 3. The tester, if contacted for follow-up information that information should be on a “follow-up form”.
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Testing Forms Are Confidential Documents



4. The evaluator should assemble all testing reports, original and “follow-up” if any.
 5. Each tester’s report should be stapled together with all documents and business cards, applications etc.
 6. Materials used to locate the test site should be included as well as its source, *i.e.* office support staff, testing supervisor, *etc.*
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Testing File

1. Once all forms and related materials are assembled a file should be created.
 2. It is recommended the file have a “control ID or number”.
 3. Using this method further increases confidentiality.
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Testing File



4. The file needs an “organizing” index at the front of the file.
 5. This should be followed by a log of testing activity.
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Testing File



6. Logs are easy to assemble if the basic concept of the “life of a test” is followed”:
 - The basis of the choice of whom to test, *i.e.* HUD deferral, *etc.* This should be a document prepared by the agency.
 - The agency basis for affirming the choice, *i.e.*, contractual.
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Testing File



6. “life of a test” (*continued*)
 - The test activities
 - The report preparations
 - The creation of the test file
 - The evaluation
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The Evaluation



1. First Issue - who evaluates the test?
 2. Does the deferral source wish the file evaluated, or do they simply want the file?
 3. It should be assumed that no matter who evaluates it, the contracting agency will want the original files.
 4. Files should be retained no matter the outcome for at least 3 years.
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The Evaluation



5. The actual evaluation should:
 - Start with the scrutiny of the index and log;
 - This scrutiny should catch any missing materials and or “gaps” in activity;
 - Both trigger “follow-up activities to complete the file;
 - Failure to do so leads to the evaluation – “test incomplete”;
 - This may trigger a “retest” but not be reimbursable.
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The Evaluation



6. “Complete” files then should be evaluated as follows:
 - Original reason for choice should be reviewed.
 - In HUD or PHRC deferral, this may be an allegation of discrimination at the test site. This includes charges of inaccessibility.
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The Evaluation

6. “Complete” files *(continued)*

- Note each file has a provision in every test to survey inaccessibility.
 - This evaluation strongly rests on how the testers are treated and if the apparent discrimination was reported.
 - This would include the confirmation of apparent inaccessibility.
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The Evaluation

6. “Complete” files *(continued)*

- The deferral of an apparent “pattern or practice” helps in the evaluation as well.
 - The criteria are the same for municipal landlord listing ordinances where testing is for specific types of discrimination related to the demographics of the area.
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The Evaluation

7. Reaching a conclusion:

- The presence of “different treatment or information” (including inaccessibility) warrants a test evaluation of either relay of information to the deferring agencies.
 - If no deferring agency, whether to file a complaint.
 - Difference of information comes in many shapes and forms.
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The Evaluation



7. Reaching a conclusion (*continued*):

- Courts have described it as that which would be recognizable by a “reasonable person”.
 - Courts also have characterized it as not only outright “denial” but also as “reluctant marketing techniques”.
 - Some providers who are cognizant of fair housing laws believe if they do not deny a tester, that is a defense.
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The Evaluation



7. Reaching a conclusion (*continued*)

Fair housing laws cover a variety of “terms and conditions” that cover housing sales, rentals, *etc.*

- Telling one tester “utilities are included” but another that they are not;
 - Stating “availability” on two different dates;
 - Different locations in the complex;
 - A later date to start construction;
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The Evaluation

- Other sections of the laws include making statements, *i.e.*, no children as well as making illegal inquiries, “do you have children” or more subtly, is that a “Hispanic name” or “do I detect an accent”.
 - Evaluations are best done by or in conjunction with someone who has with testing experience.
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The Evaluation

- Evaluations are to be objective so there should be no “staining at gnats” to “find discrimination”.
 - No evaluator I know of has the power to “find discrimination”. That is the role of the “adjudicator”.
 - So as an evaluator, be happy finding a “difference in information” if it is there. That triggers the investigation.
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