



The Office of Vince Ryan  
County Attorney

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FILE # 02-456050-12  
ID # 456050

April 04, 2012

Honorable Greg Abbott  
Attorney General of Texas  
Supreme Court Building  
P. O. Box 12548  
Austin, Texas 78711-2548

*Via Certified Mail/ Return Receipt Requested*

Attention: Open Records Committee

Re: Public Information Request by Wm. F. Kenny to the Harris County Sheriff's Office for the 911 audio concerning a 911 call placed on February 14, 2012 around 6:55pm.

Dear General Abbott:


On March 23, 2012, the Harris County Sheriff's Office, received a written request for information pursuant to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001-552.353, as amended, concerning the referenced matter. This office believes some of the requested records/information may fall within exceptions from disclosure to the Texas Public Information Act. A memorandum brief and the information for which the Sheriff's Office is seeking exception are enclosed.

The requestor is being copied with this letter and is being notified that any questions regarding the Texas Public Information Act may be directed to the Office of the Attorney General's Hotline at (877) 673-6839.

Please provide us with your opinion regarding this matter.

Yours very truly,

VINCE RYAN  
County Attorney

By   
for Susan Fillion  
Assistant County Attorney

Enclosures  
cc/without Exhibit "B"  
Wm. F. Kenny  
19406 Gooselake Lane  
Houston, Texas 77084

## MEMORANDUM BRIEF

The Harris County Sheriff's Department received the enclosed written request for information on March 23, 2012. *See* Exhibit "A." The requestor, Wm. F. Kenny, 19406 Gooselake Lane, Houston, Texas, 77084, has asked for the audio recording of a 911 call placed on February 14, 2012, around 6:55 p.m., regarding a supposedly reported threat on the life of the 911 caller. The requestor believes the 911 caller's name is Joe Felice and believes the 911 call was made from telephone number 281-599-1572. No information has been released as the information requested appears to fall within exceptions to the Public Information Act. The responsive information (the compact disk) for which we are seeking an exception is enclosed. *See* Exhibit "B."

The 911 audio recording contains the originating telephone number of the 911 caller and the name of the caller.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. Gov't Code § 552.101.

The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). The informer's privilege has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969).

The activity alleged in this 911 call related to threats made against the caller and other members of his family. In the request, the requesting party states that he "believes" the party making the 911 call is Joe Felice, thus, we cannot say for certain that the requestor knows the identity of the individual who reported the violation to the law enforcement agency.

The Harris County Sheriff's Office believes that because such alleged activity could result in civil or criminal penalties, and because the requestor may not know the informer's identity, that such information should be protected under Section 552.101 of the Government Code in conjunction with the informer's privilege.

Pursuant to the above-stated arguments and authorities, as well as such other provisions of law as may be applicable; the Harris County Sheriff's Office requests that information contained in Exhibit "B" should be excepted from disclosure.