



# STATE OF INDIANA

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January 29, 2010

Mr. John Milburn  
111 South American Legion Place  
Suite 171  
Greenfield, IN 46140

*Re: Informal Inquiry 09-INF-33; Indiana Department of Transportation*

Dear Mr. Milburn:

This is in response to your informal inquiry regarding the Indiana Department of Transportation ("INDOT") and information transmitted by its continually operating reference systems ("CORS"). Pursuant to Indiana Code § 5-14-4-10(5), I issue the following advisory opinion. My opinion is based on applicable provisions of the Indiana Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.*

## BACKGROUND

You have requested an advisory opinion regarding whether INDOT may "either charge government entities for or deny access to the information transmitted by the [CORS] the department maintains." By way of background to your inquiry, you are a representative of the County Surveyors Association and one of your duties is to promote the sharing of information between government agencies that helps surveyors fulfill their statutory duties as outlined in Ind. Code § 36-2-12, specifically those duties related to mapping and section corner perpetuation.

Surveyors establish the location of section corners in their jurisdictions, which are commonly used in property surveys to help establish boundaries by providing licensed surveyors with a known location from which to begin surveying. Surveyors often use global positioning systems ("GPS") to locate section corners. GPS units receive information from orbiting GPS satellites, which triangulate the operator's position on the ground.

INDOT operates forty-five (45) CORS throughout the State. The CORS relay their positions on the ground to GPS units to more accurately provide locations to GPS unit operators. A GPS unit would receive information from a CORS by use of a data phone, which is essentially a cellular phone that can be used to dial into a reference station and receive information from the CORS.

CORS data is neither copied nor duplicated to a storage device; a GPS unit receives CORS data and then rectifies position based on the reference station and whatever satellites it can access. The GPS unit does not record CORS data in a manner which can be extracted by the government entity afterward, and a county's GPS unit could not create a copy of the CORS data because only the GPS unit's position is retained. Based on this information, you ask several questions:

- (1) Does the information transmitted by INDOT's CORS constitute a public record?
- (2) Does CORS information fall within the exceptions of the APRA?
- (3) Does a GPS unit tying into a CORS constitute the 'copying' of a public record?
- (4) Can the INDOT charge a government entity for access to CORS information?

I note that after you submitted this inquiry, INDOT informed you that its CORS are freely accessible by anyone at no charge. Nevertheless, you seek my informal opinion regarding the status of CORS information under the APRA.

#### ANALYSIS

As an initial matter, if the CORS data are not public records within the meaning of the APRA, the remaining questions are rendered moot because the APRA would not apply to the information transmitted via CORS. The APRA provides the following definition of a public record:

"Public record" means any writing, paper, report, study, map, photograph, book, card, tape recording, or other **material** that is created, received, retained, maintained, or filed by or with a public agency and **which is generated on** paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

I.C. § 5-14-3-2(n) (emphasis added). Here, the CORS information does not seem to constitute "material" because it is not recorded onto any kind of storage device. Moreover, no public agency creates a record of the data and even a GPS unit that accesses CORS does not maintain a record of the data received from the system. The information is also not "generated on" any kind of material which could later be inspected or copied. *Id.*

It seems that information accessible through CORS is akin to information transmitted through public agencies' telephone systems. In both cases, information is received and transmitted by means of the system, but no recordings are made of those transmissions. Because no material record of telephone conversations is generated (in the normal course of business), there are no records of live telephone conversations that would be accessible to the public. Similarly, the CORS information is not a public record because it is in no way recorded such that it could be inspected or copied in accordance with the APRA. *See* I.C. § 5-14-3-3(a). Because I do not believe the General Assembly enacted the APRA with intentions of creating a right for any citizen to access public agencies' telephone conversations, it is also my opinion that the APRA does not create a right to access information -- such as CORS information -- that is transmitted by public agencies if that information is not recorded on any material that would allow for future inspection and copying.

Based on the foregoing, it is my opinion that the CORS information is not a public record within the meaning of the APRA. Consequently, it is also my opinion that the remaining questions in your inquiry are moot because the APRA does not apply to such information.

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive style with a large, sweeping initial "A".

Andrew J. Kossack  
Public Access Counselor

cc: Mark Ahearn, Indiana Department of Transportation