

August 19, 2004

Mr. Larriante J. Sumbry, #965137  
Indiana Department of Correction  
Indiana State Prison  
P.O. Box 41  
Michigan City, IN 46361-0041

*Re: Advisory Opinion 04-FC-118; Alleged Violation of the Access to Public Records Act  
by the Indiana Secretary of State*

Dear Mr. Sumbry:

This is in response to your formal complaint alleging that the Indiana Secretary of State ("Secretary of State") violated the Access to Public Records Act (APRA), I.C. §5-14-3, by failing to respond to your request for records within the time period set by statute. The Secretary of State has responded to your complaints, a copy of which is enclosed for your reference. For the reasons set forth below, I find that the Secretary of State did not violate the Access to Public Records Act as alleged in your complaint.

#### BACKGROUND

Your complaint alleges that on July 5, 2004, you mailed a written request for records to the Secretary of State. In your letter, you request the following documents:

- The UCC Handbook
- The Ancient Negotiable Instruments Manual
- The UCC Articles/Commercial Paper Manual
- A manual on how to file a claim against a board
- The Secretary of State Annual Report
- The International Human Rights Law/Law of Merchant Manuals

After receiving no response to your request, you filed a formal complaint with our office. We forwarded a copy to the Secretary of State for response.

In response to your complaint, Ms. Heather Willis, Deputy Secretary of State/Chief of Staff, advised our office that the Secretary of State had not received your July 5, 2004 request.

## ANALYSIS

The Secretary of State is a public agency for purposes of the Access to Public Records Act. A public agency that receives a request for records under the APRA has a specified period of time to respond to the request. I.C. §5-14-3-9(b). A timely response to the request need not include production of the requested documents or expressly decline to produce documents responsive to the request. A public agency may comply with its response obligation under the statute by acknowledging receipt of the request and indicating the specific actions the agency is taking toward production of the requested document.

When a public record request is made in writing and delivered to the public agency by mail or facsimile, the public agency is required to respond to that request within seven (7) days of receipt of the request. I.C. §5-14-3-9(b). If that period of time elapses without a response, the request is presumed denied. I.C. §5-14-3-9(b). However, a public agency must first receive a request in order to be responsible for a response under I.C. § 5-14-3-9. *Opinion of the Public Access Counselor 03-FC-25*.

The Secretary of State expressly denies receipt of your July 5, 2004 request. While you provide a copy of a record request dated July 5, 2004, there is no evidence establishing that the request was posted by you on that date or that it was subsequently received by the Secretary of State. Accordingly, I decline to find the Secretary of State in violation of the Access to Public Records Act for failing to timely respond to your request for records it alleges it never received.

It should be noted that the Secretary of State's response affirms that even if they had received your request, they would be unable to provide those records to you because they do not have the documents requested. The Access to Public Records Act neither requires an agency to generate a record in response to a request, nor produce a record that agency does not have. Therefore, failure of an agency to provide a record it does not have is not a denial under the APRA.

## CONCLUSION

For the reasons set forth above, I find that the Indiana Secretary of State did not violate the Access to Public Records Act as alleged in your complaints.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Ms. Heather C. Willis; w/out enclosures