

December 16, 2004

Larriante J. Sumbry  
P.O. Box 41  
Michigan City, Indiana 46360

*Re: Formal Complaint 04-FC-217; Alleged Violation of the Access to Public Records Act by the Indiana Department of Administration Ombudsman Bureau*

Dear Mr. Sumbry:

This is in response to your formal complaint alleging that the Indiana Department of Administration Ombudsman Bureau ("Bureau") violated the Access to Public Records Act by failing to respond to your request for records. I find that the Bureau did not violate the Access to Public Records Act, because it did not receive your request for records.

#### BACKGROUND

You enclosed with your written complaint a copy of a letter, addressed only to a Ms. Whiteman, in which you requested the ombudsman annual report, a copy of the personnel policy, comprehensive plan, ombudsman professional services contracts, ombudsman contract for employment, and ombudsman handbook of practice and internal procedures. I sent this request along with a copy of your complaint to Kelly Whiteman at the Bureau. She sent a letter in response to your complaint, which I enclose for your reference. She states that after a search of Bureau records, the Bureau does not believe that it ever received your request. In addition, she states that her response would have been that none of the records that you requested exist.

#### ANALYSIS

Any person may inspect and copy the public records of a public agency at any time during the regular business hours of the agency. IC 5-14-3-3(a). A public agency that receives a written request for records via U.S. Mail is required to respond in writing within seven (7) days after receiving the request. IC 5-14-3-9(b). The Bureau states that it had no record of having received your request for records. Your letter does not bear any inside address indicating the mailing address of your October 26 letter. Moreover, you have not demonstrated that a letter

requesting records was duly mailed with sufficient postage. Therefore, the Bureau did not violate the Access to Public Records Act by failing to respond to a request, because the agency cannot respond to a request that it has not received.

Also, the Bureau indicated that it does not possess the records that you seek. Perhaps some of the records are maintained by the Department of Administration, but your request specifically seeks records related to the Bureau, which request may have been too narrow in scope. In any case, you are free to resubmit a different request if you believe that the Bureau maintains records that you desire to inspect or copy.

#### CONCLUSION

For the foregoing reasons, I find that the Department of Administration Ombudsman Bureau did not violate the Access to Public Records Act.

Sincerely,

Karen Davis  
Public Access Counselor

cc: Ms. Kelly Whiteman