

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

CAMPAIGN FOR ACCOUNTABILITY, )  
a Washington, DC, not-for-profit Corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
 )  
 )  
MIKE HUNTER, in his official capacity )  
as ATTORNEY GENERAL OF THE STATE )  
OF OKLAHOMA; and GARY JONES, in his )  
official capacity as STATE AUDITOR AND )  
INSPECTOR OF THE STATE OF )  
OKLAHOMA )  
 )  
Defendants. )

Case No. \_\_\_\_\_  
Judge \_\_\_\_\_

**PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF  
FOR VIOLATION OF THE OKLAHOMA OPEN RECORDS ACT**

COMES NOW the Plaintiff, Campaign for Accountability, by and through its attorney of record, David McCullough of Doerner Saunders Daniel & Anderson, LLP, and pursuant to the Oklahoma Open Records Act, 51 O.S.Supp.2016 § 24A.1 et seq., (“ORA”) and more specifically, 51 O.S.Supp.2016 § 24A.17, who hereby petitions this Honorable Court to declare that certain public records as specified herein must be made available to the Plaintiff and to enjoin Defendants from continuing to deny access to the specified public records in violation of the ORA. In support of this Petition, the Plaintiff would show the Court as follows:

**Identification of Parties and Venue**

1. The Plaintiff, Campaign for Accountability (“CfA”), is a non-profit, non-partisan tax-exempt entity organized under § 501(c)(3) of the internal Revenue Code. CfA uses research, litigation and communications to expose misconduct and malfeasance in public life. As part of its

research, CfA uses government records made available to it under public information laws as well as government records agencies have released publicly.

2. Defendant Mike Hunter, Attorney General of the State of Oklahoma, is a “public official” as defined in the ORA, 51 O.S.Supp.2016 § 24A.3(4).

3. Defendant Gary Jones, State Auditor and Inspector of the State of Oklahoma, is a “public official” as defined in the ORA, 51 O.S.Supp.2016 § 24A.3(4).

4. The records requested by CfA are public records as defined in the ORA, 51 O.S.Supp.2016 § 24.A.3.1. See also 74 O.S.Supp.2016 § 225 (“The reports required by this act [Oklahoma Auditor and Inspector] are in addition to all other reports required by law to be made, and *shall be public records.*”) (emphasis added)

5. The dispute giving rise to this lawsuit stems from CfA’s ORA request submitted to State Auditor Jones (“Auditor’s Office”) and Attorney General Hunter (“AG’s Office”) seeking access to copies of certain audits and related documents regarding the Tar Creek Reclamation site and the Lead-Impacted Communities Relocation Trust (“LICRAT”). Specifically, CfA requested audits and related documents created as part of a review of LICRAT conducted by the Auditor’s Office in response to a request by the Attorney General of Oklahoma. The requested documents constitute a public record as defined by the Open Records Act 51 O.S.Supp.2016 § 24A.3(1).

6. This court has jurisdiction over the parties and subject matter and venue are proper.

**Facts Pertaining to Open Records Act Request**

7. On April 21, 2011, then Oklahoma Attorney General Pruitt sent a letter to State Auditor Jones requesting that the Auditor’s Office conduct an investigative audit into “suspected unlawful contracting practices of the Lead-Impacted Communities Relocation Trust (also known as LICRAT), a Public Trust and Agency of the State of Oklahoma, as attempted to be executed on

its own behalf and later executed through the auspices of the Department of Central Services, also a State Agency.” A copy of the April 21, 2011 letter is Exhibit 1 hereto (“*April 21, 2011 Letter*”).

8. According to the AG’s Office, the concerns about LICRAT’s suspected unlawful contracting practices had been brought to the attorney general’s attention in a Memorandum submitted to the AG’s Office by then-United States Senator Tom Coburn. *Id.*

9. On February 24, 2015, the Auditor’s Office sent a letter to Attorney General Pruitt requesting that the AG’s Office “grant its release of the Lead-Impacted Communities Relocation Assistance Trust (LICRAT) Special Audit.” The letter stated that the summation of the completed investigation audit had been transmitted to the AG’s Office in January 2014. A copy of the February 24, 2015 letter is Exhibit 2 hereto.

10. On May 7, 2015, the AG’s Office responded, stating “the Oklahoma Attorney General’s Office does not authorize the release of said audit,” and claiming to be “concerned about publication of unsubstantiated criminal allegations against private citizens.” A copy of the May 7, 2015 letter is Exhibit 3 hereto.

11. On May 14, 2015, State Auditor Jones responded to Attorney General Pruitt, writing:

[W]e want to express our confusion as to your statement of concern about *publication of unsubstantiated criminal allegations against private citizens*. Our office has received no inquiries from you or your staff regarding the content of the audit report. We are not aware of any unsubstantiated claims, and believe the audit report represents an accurate account of our findings resulting from a considerably extensive and thorough investigation of the matter.

A copy of the May 14, 2015 letter is Exhibit 4 hereto.

12. State Auditor Jones also expressed his puzzlement regarding AG Pruitt’s argument, stating “your use of the term *private citizens* is equally baffling. To our knowledge, the

individuals named in the report are members of a *public trust* or a contractor whose services were retained as part of this substantive project.” *Id.* (emphasis in original).

13. On August 3, 2017, the AG’s Office, responding to another request from the Auditor’s Office to release the LICRAT audit, stated “this audit shall remain a confidential criminal investigatory file in the Office of the Attorney General and will not be released,” and that the AG’s Office was “returning the two binders to your office.” A copy of the August 3, 2017 letter is Exhibit 5 hereto.

14. On November 9, 2017, CfA sent an ORA request to the Auditor’s Office seeking “access to copies of certain audits and related documents regarding ... (“LICRAT”). Specifically, CfA requests audits and related documents created as part of a review of LICRAT conducted in response to a request from the Attorney General of Oklahoma made pursuant to 74 O.S. § 18f.” A copy of the November 9, 2017 letter is Exhibit 6 hereto.

15. The Auditor’s Office responded to CfA’s ORA request by email on November 13, 2017, stating it “concur[s] fully with the position you [CfA] have stated. We have made arguments along the same lines to the Oklahoma Office of the Attorney General, to both previous AG Pruitt and current AG Mike Hunter.” A copy of the email is Exhibit 7 hereto.

16. Trey Davis, Director of Administration for the Auditor’s Office, writing on behalf of the office, stated “Let me be clear, if it was up to us, we would publicly release the audit and all of its associated work papers. We uphold the public’s right to know how its tax dollars are being spent. We strenuously promote accountability and transparency in both the action of public officials and expenditure of public funds.” *Id.*

17. Mr. Davis concluded, “We regret that we are unable to respond to your request as we find the position of the AG to be untenable despite that office being regarded as the state’s

chief law enforcer. In the final analysis, we are auditors, not attorneys, and we will—reluctantly—follow this legal position as expressed until such time as the opinion has been overturned by a court of competent jurisdiction.” *Id.*

18. In response to Mr. Davis’s letter, on November 14, 2017, CfA sent an ORA request by email to the AG’s Office requesting “access to copies of certain audits and related documents regarding ... (“LICRAT”). Specifically, CfA requests audits and related documents created as part of a review of LICRAT conducted in response to a request from the Attorney General of Oklahoma made pursuant to 74 O.S. § 18f.” A copy of CfA’s November 14, 2017 letter is Exhibit 7 hereto.

19. The following day, CfA received a response to its ORA request from the AG’s Office to the ORA request, stating the “Open Records Act exempts from disclosure the investigative and litigation files of the Attorney General’s Office. 51 O.S. Supp.2016, § 24A.12.” A copy of the November 15, 2017 ORA response is Exhibit 8 hereto.

20. Neither the Auditor’s Office nor the AG’s Office has produced the requested public records in response to CfA’s request.

#### **Applicable Legal Authority**

The ORA expresses that it is the “public policy of the State of Oklahoma that the people are vested with the inherent right to know and be fully informed about their government.” 51 O.S. Supp. 2016, § 24A.2. The ORA defines public records as “all documents.” 51 O.S.Supp.2016, § 24A.3(1). This includes “special or investigative audits” performed by the Auditor’s Office. See 74 O.S.Supp.2016, § 212.C.4.d. These special or investigative audits are public records. See 74 O.S.Supp.2016, § 225 (“The reports required by this act [Oklahoma Auditor and Inspector] are in addition to all other reports required by law to be made, and shall be public records.”).

The ORA “imposes a duty on a public body to ‘provide prompt, reasonable access to its records’.” 2005 OK AG 3, ¶ 4 (internal citation omitted). A public official that denies access to a record must cite the specific exemption relied upon to deny access. See *Citizens Against Taxpayer Abuse, Inc. v. City of Oklahoma City*, 2003 OK 65, ¶ 12; See also 1995 OK AG 97, ¶ 5. (“The burden to establish a privilege of confidentiality rests upon the person or entity who seeks to establish it.”)

The ORA further provides that access to records “shall not be denied because a public body or public official is using or has taken possession of such records for investigatory purposes or has placed the records in a litigation or investigation file.” 51 O.S.Supp.2016, § 24A.20. Further, a “law enforcement agency may deny access to a copy of such a record in an investigative file [only] if the record or a true and complete copy thereof is available for public inspection and copying at another public body.” *Id.*

In the present case, the public maintains a compelling interest in records of and concerning public bodies that disclose whether the public body and its employees are “honestly, faithfully, and competently performing their duties” and unless the records are confidential by law, the records must be made available to the citizens. 51 O.S.Supp.2016, § 24A.2 and § 24A.5(3)(b).

The requested records of a special audit are not confidential by law and, thus, the Defendants do not possess a legitimate reason for refusing to produce the requested record in this case.

Under the Open Records Act, any person denied access to records of a public body or public official may bring a civil suit for declarative or injunctive relief. 51 O.S.Supp.2016, § 24A.17.

Pursuant to 12 O.S.Supp.2016 § 1451 and § 1453, the foregoing facts warrant the issuance of an alternative Writ of Mandamus commanding the Defendants to produce the requested records by a date certain or appear before the Court to show cause as to why the records are not being produced.

WHEREFORE, Plaintiff, Campaign for Accountability, respectfully prays for judgment in its favor and against each of the Defendants, Gary Jones, in his official capacity of State Auditor and Inspector of the State of Oklahoma, and Mike Hunter, in his official capacity as Attorney General of the State of Oklahoma, as follows:

- a. Declaring, pursuant to 51 O.S.Supp.2016 § 24A.17(B) CfA's right to access the requested documents, in accordance with the Open Records Act, and finding the Defendants to be in violation of the Open Records Act;
- b. Issuance of an injunction, pursuant to 51 O.S.Supp.2016 § 24A.17(B), or of a writ of mandamus, pursuant to 12 O.S.Supp.2016 §§ 1451 *et seq.*, commanding Defendants to immediately produce the requested records by a date certain or to appear and show cause as to their reason for failing to produce the requested records;
- c. Awarding to CfA reasonable attorneys' fees and costs, pursuant to 51 O.S.Supp.2016 § 24A.17(B)(2); and
- d. Grant such other relief as may be just and equitable.

Respectfully submitted,

DOERNER, SAUNDERS, DANIEL  
& ANDERSON, L.L.P.

By:

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