

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.)

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

NOV 27 2017

RICK WARREN
COURT CLERK

Case No. 30
Judge parrish

CV - 2017 - 2335

**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 “concurs 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 8 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 9 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:

A handwritten signature in dark ink, appearing to read 'David McCullough', is written over a horizontal line.

David McCullough, OBA No. 10898
1800 N. Interstate Dr., Suite 104
Norman, Oklahoma 73072-3501
Telephone: (405) 319-3501
Facsimile: (405) 319-3509
dmccullough@dsda.com

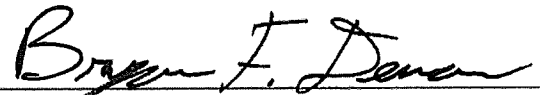
VERIFICATION

DISTRICT OF COLUMBIA) ss.

Daniel Stevens, Executive Director of the Campaign for Accountability, of lawful age, being first duly sworn upon oath, deposes and states that he has read the above and foregoing Petition, that he is familiar with the contents thereof, and that the facts therein set forth are true and correct to the best of knowledge and belief.


Daniel Stevens

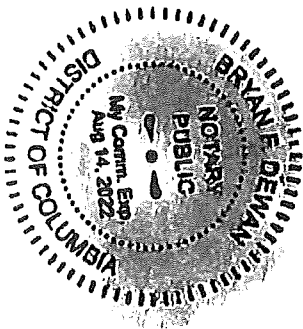
Subscribed and sworn to before me this 27th day of November, 2017.


Notary Public
Commission Number _____

My Commission Expires:
August 14, 2022

4461843.1

4466061.1





E. SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA



April 21, 2011

The Honorable Gary Jones
State Auditor and Inspector
100 State Capitol Building
2300 N. Lincoln Blvd.
Oklahoma City, OK 73105-4802

Re: Allegations of Wrongdoing Regarding Awarding of Tar Creek Reclamation Contracts by
or on behalf of the Lead-Impacted Communities Relocation Trust (LICRAT)

Dear Mr. Jones:

I have received the enclosed *Memoranda* from Jerry Morris, State Director for the Honorable Tom A. Coburn, U.S. Senator, expressing certain concerns brought to the attention of the Senator and his staff pertaining to the awarding of certain contracts for reclamation of properties in the Tar Creek area. Forwarded with these *Memoranda* was a large quantity of documents gathered and supplied in support of the several allegations. The concerns expressed by the *Memoranda* are in reference to the 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. I have determined that these concerns are serious in nature such that an investigation of the matter is warranted.

I hereby request, pursuant to 74 O.S. 2001, § 18f, that you undertake an Investigative Audit of these matters and provide a report of your findings to address the following concerns:

1. In regard to the *Lead-Impacted Communities Relocation Assistance Trust Property Improvement Clearance Project* that was let and awarded on or about March 24, 2010 by the LICRAT:

A. Were bids solicited, received and contract awarded pursuant to the provisions of the *Public Competitive Bidding Act of 1974* (as amended), 61 O.S. 2001, §§101 *et seq.*?

B. If the contract was awarded to any bidder than the lowest bidder, was a credible written explanation of the award of bid filed in accordance with 61 O.S. 2001, § 117?

C. Is there any evidence of an agreement or collusion among bidders, prospective bidders and/or material suppliers in restraint of freedom of competition [including, but not limited to, whether the winning bidder served as a "straw bidder" for an actual other person or entity], 61 O.S. Supp. 2008, § 115? If so was a knowingly false affidavit of non-collusion filed in support of a bid, 74 O.S. Supp. 2009, §85.22? Were the rights to the contract unlawfully transferred from the winning bidder to another person or entity?

D. Is there any evidence of an illegal conflict of interest between the entity awarded the winning bid and any Trustee of the public trust or its chief administrative officer contrary to 61 O.S. 2001, § 114?

E. Is there any evidence of any unlawful disclosure(s) by any person contrary to 61 O.S. Supp. 2006, § 116?

F. Is there any evidence that the successful bidder knowingly provided misstatements of existing or past material fact(s) to the Public Trust in support of its bid for the award of the contract, 21 O.S. 2001, § 1541.1 and 1541.2?

G. Is there any evidence that two (2) or more persons agreed to take, and thereafter undertook, any action or make any representation to the Public Trust calculated to impair, obstruct or defeat the Public Trust in its lawful function of awarding the contract to the lowest and best bidder, 21 O.S. 2001, § 424?

H. Is there any evidence that the awarding of the contract was influenced in any way by the promise or transfer of some thing of value or gift to a public official or employee, 21 O.S. 2001, §§381 & 382, 21 O.S. 2001, § 341(First), or 74 O.S. 2001, § 3401 *et seq.*?

I. Is there any evidence of an Open Meeting violation by the LICRAT Trustees in the awarding of the contract, 25 O.S. 2001, § 314? If so, has the District Attorney taken any action in regard to that event?

2. In regard to the re-letting of the contract by LICRAT through the Department of Central Services:

A. A. Were bids solicited, received and contract awarded pursuant to the provisions of the *Public Competitive Bidding Act of 1974* (as amended), 61 O.S. 2001, §§101 *et seq.*?

B. If the contract was awarded to any bidder than the lowest bidder, was a credible written explanation of the award of bid filed in accordance with 61 O.S. 2001, § 117?

C. Is there any evidence of an agreement or collusion among bidders, prospective bidders and/or material suppliers in restraint of freedom of competition [including, but not limited to,

The Honorable Gary Jones,
State Auditor and Inspector

-3-

April 21, 2011

whether the winning bidder served as a "straw bidder" for an actual other person or entity], 61 O.S. Supp. 2008, § 115? If so was a knowingly false affidavit of non-collusion filed in support of a bid, 74 O.S. Supp. 2009, §85.22? Were the rights to the contract unlawfully transferred from the winning bidder to another person or entity?

D. Is there any evidence of an illegal conflict of interest between the entity awarded the winning bid and any Trustee of the public trust or its chief administrative officer contrary to 61 O.S. 2001, § 114?

E. Is there any evidence of any unlawful disclosure(s) by any person contrary to 61 O.S. Supp. 2006, § 116?


F. Is there any evidence that the successful bidder knowingly provided misstatements of existing or past material fact(s) to the Public Trust in support of its bid for the award of the contract, 21 O.S. 2001, § 1541.1 and 1541.2?

G. Is there any evidence that two (2) or more persons agreed to take, and thereafter undertook, any action or make any representation to the Public Trust calculated to impair, obstruct or defeat the Public Trust in its lawful function of awarding the contract to the lowest and best bidder, 21 O.S. 2001, § 424?

H. Is there any evidence that the awarding of the contract was influenced in any way by the promise or transfer of some thing of value or gift to a public official or employee, 21 O.S. 2001, §§381 & 382, 21 O.S. 2001, § 341(First), or 74 O.S: 2001, § 3401 *et seq.*?

I also provide herewith the several documents supplied to us by Senator Coburn's office.

Respectfully,

A handwritten signature in black ink, appearing to read "Scott Pruitt", is written over a horizontal line.

Scott Pruitt
Attorney General

ENCLOSURES

cc: file



Oklahoma State Auditor & Inspector

2300 N. Lincoln Blvd. • State Capitol, Room 100 • Oklahoma City, OK 73105 • Phone: 405.521.3495 • Fax: 405.521.3426

February 24, 2015

The Honorable Scott Pruitt
Oklahoma Attorney General
313 NE 21st Street
Oklahoma City, OK 73105

Re: Request to release Special Audit - LICRAT

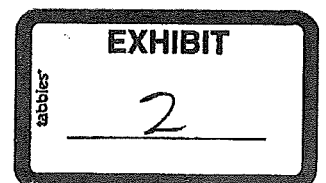
Dear General Pruitt:

The Office of the State Auditor & Inspector is respectfully requesting that the Office of Attorney General grant its release of the Lead-Impacted Communities Relocation Assistance Trust (LICRAT) Special Audit.

The summation of our Special Investigation of LICRAT was transmitted to your office in January 2014.

Sincerely,

Gary A. Jones, CPA, CFE
Oklahoma State Auditor & Inspector





E. SCOTT PRUITT
ATTORNEY GENERAL

May 7, 2015

The Honorable Gary A. Jones
Oklahoma State Auditor and Inspector
2300 N. Lincoln Boulevard, Suite 100
Oklahoma City, Oklahoma 73105

Re: LICRA TRUST AUDIT

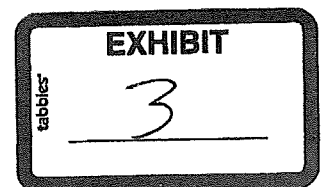
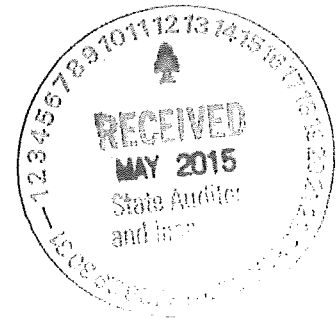
Dear Mr. Jones:

The Oklahoma Attorney General's Office has reviewed your request for authorization to publish the Oklahoma State Auditor and Inspector's audit of LICRAT conducted per a formal request by our office made pursuant to our authority under Title 74 O.S. § 18f. Upon review of the audit and other relevant documents, the Oklahoma Attorney General's Office does not authorize the release of said audit. Specifically, our office is concerned about publication of unsubstantiated criminal allegations against private citizens. If you have any additional question or concerns, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Scott Pruitt".

E. SCOTT PRUITT
ATTORNEY GENERAL





Oklahoma State Auditor & Inspector

2300 N. Lincoln Blvd. • State Capitol, Room 100 • Oklahoma City, OK 73105 • Phone: 405.521.3495 • Fax: 405.521.3426

May 14, 2015

The Honorable E. Scott Pruitt
Oklahoma Attorney General
313 NE 21st Street
Oklahoma City, OK 73105

Re: LICRA TRUST AUDIT

Dear General Pruitt:

We are in receipt of your letter dated May 7, 2015, in which you state you do *not authorize the release* of the LICRA TRUST Audit. It is our understanding that you are utilizing your prosecutorial discretion in your decision not to pursue criminal charges against any individual(s) associated with this significant expenditure of public funds.

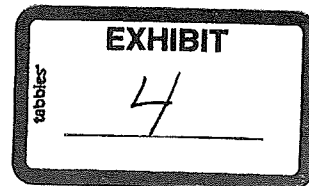
In response, we want to express our confusion as to your statement of concern *about publication of unsubstantiated criminal allegations against private citizens*. Our office has received no inquiries from you or your staff regarding the content of the audit report. We are not aware of any *unsubstantiated*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

In addition, 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.

We do not believe the audit report forwarded to your office is deficient with regard to content or supporting documentation. If you require substantiation of any information, we would be happy to provide such to your investigators and attorneys and hold that the documentation obtained in the course of this special audit is more than sufficient to substantiate its findings.

Sincerely,

Gary A. Jones, CPA, CFE
State Auditor & Inspector





OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

August 3, 2017

The Honorable Gary A. Jones
Oklahoma State Auditor and Inspector
State Capitol, Room 100
2300 N. Lincoln Blvd.
Oklahoma City, OK 73105

Re: LICRAT Audit

Dear Mr. Jones:

After review of the Lead-Impacted communities Relocation Assistance Trust (LICRAT) audit, executed at the request of the Attorney General under his authority provided by 74 O.S. § 18f, the following conclusions are reached:

1. The audit was a criminal audit ordered under the supervision of the Multi-County Grand Jury Unit.
2. The Multi-County Grand Jury Unit reviewed the audit at the time it was presented by the Auditor and Inspector.
3. The Attorney General, after being fully advised of the findings, declined to take any action, criminal or otherwise, as a result of the audit.
4. As with any criminal investigation by this office, the report and findings of this audit by the Auditor and Inspector acting as an agent in support of our law enforcement function will remain confidential.

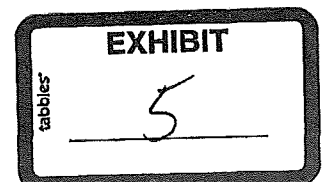
Therefore, this audit shall remain a confidential criminal investigatory file in the Office of the Attorney General and will not be released.

Thank you for your cooperation. I am returning the two binders to your office.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Gruber", written over a horizontal line.

TOM GRUBER
Senior Deputy Attorney General



C A M P A I G N F O R ACCOUNTABILITY

November 9, 2017

By Email: gjones@sai.ok.gov

Gary A. Jones
Oklahoma State Auditor & Inspector
2300 N. Lincoln Blvd., Room 100
Oklahoma City, OK 73105

Re: Oklahoma Open Records Act Request

Dear Mr. Jones:

Pursuant to the Oklahoma Open Records Act, 51 O.S. § 24A.1 *et seq.* ("ORA"), Campaign for Accountability ("CfA"), a nonprofit watchdog group, requests 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 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.

By way of background, on April 21, 2011, then-Oklahoma Attorney General Scott Pruitt asked State Auditor & Inspector, Gary Jones, to investigate several issues related to the Tar Creek superfund site.¹ In January 2014, Mr. Jones reported his finding to Mr. Pruitt.² While Mr. Jones said he found evidence of criminal wrongdoing at the site, Mr. Pruitt rejected the findings and declined to bring criminal charges.³

On February 24, 2015, your office requested that Mr. Pruitt authorize the release of the LICRAT Special Audit pursuant to the ORA. A copy of that request is attached as Exhibit A. Mr. Pruitt responded to the request on May 7, 2015, stating "our office is concerned about publication of unsubstantiated criminal allegations against private citizens." A copy of Mr. Pruitt's letter is attached as Exhibit B. On May 14, 2015, your office replied to Mr. Pruitt's letter, stating that you were not aware of "any unsubstantiated claims" and that "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." A copy of your letter is attached as Exhibit C.

¹ Letter from Oklahoma Attorney General Scott Pruitt to Oklahoma State Auditor & Inspector Gary Jones, April 21, 2011, available at https://www.cenews.net/assets/2017/09/05/document_gw_01.pdf.

² Mike Soraghan, Pruitt Declined to Prosecute Fraud Allegations as Okla. AG, *E&E News*, September 5, 2017, available at <https://www.cenews.net/stories/1060059637>.

³ *Id.*

Mr. Gary Jones
November 9, 2017
Page 2

To summarize this correspondence, your office stated that, contrary to Mr. Pruitt's assertion, the LICRAT Special Audit concerned only public officials and a contractor receiving public funds under a contract with a public body.

The public policy of the ORA, found at 51 O.S. § 24A.2, states:

As the Oklahoma Constitution recognizes and guarantees, all political power is inherent in the people. Thus, 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. The Oklahoma Open Records Act shall not create, directly or indirectly, any rights of privacy or any remedies for violation of any rights of privacy; nor shall the Oklahoma Open Records Act, except as specifically set forth in the Oklahoma Open Records Act, establish any procedures for protecting any person from release of information contained in public records. The purpose of this act is to ensure and facilitate the public's right of access to and review of government records so they may efficiently and intelligently exercise their inherent political power.

Consistent with this stated public policy, the State Auditor and Inspector's Office has routinely released special investigation audits performed at the request of other agencies. *See e.g.* The Association of County Commissioners of Oklahoma Investigative Report (Feb. 29, 2016); Tulsa County Sheriff's Office Inmate Trust Account Investigative Audit (Jan. 9, 2017); Ottawa Reclamation Authority Special Audit (Sept. 13, 2006). As you indicated in your May 14 letter to Mr. Pruitt, the LICRAT Special Audit is complete and should be released as required under the ORA. It is therefore incumbent upon your office to comply with this open records request made in accordance with 51 O.S. § 24A.5.

The Oklahoma Supreme Court has held that a public body claiming exemption from the requested disclosure has the burden to prove that an exemption applies. *Citizens Against Taxpayer Abuse, Inc. v. City of Oklahoma City*, 2003 OK 65, ¶ 12. The Court also has said government officials must consider in ruling on records requests that "disclosure is to be favored over a finding of exemption." *Tulsa Tribune Co. v. Okla. Horse Racing Commission*, 1986 OK 24, ¶ 23. If it is your position that any portion of the requested records is exempt from disclosure, please state the basis of the exemption. In the event a portion of a requested record is properly exempt from disclosure, please redact that portion and produce the remainder of the requested record. 51 O.S. § 24A.5(2).

Where possible, please produce records electronically or on a USB drive. CfA seeks records of any kind, including electronic records, audiotapes, videotapes, and photographs. This request includes any letters, emails, facsimiles, telephone messages, voice mail messages, text messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. This request also includes any attachments to these records.

Mr. Gary Jones
November 9, 2017
Page 3

The ORA requires public bodies to provide “prompt, reasonable access to its records.” 51 O.S. § 24A.5.6. If the requested records are not to be produced within five business days, CfA request that you provide a date certain when the documents will be produced and/or a statement detailing the specific exemptions you are relying upon in support of your decision not to produce the public records. If you foresee any problems in releasing fully the requested records within that time-period, please contact me at 202-780-5750.

Fee Waiver Request

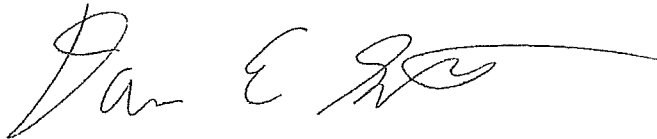
The ORA prohibits the charging of a search fee when the release of the “documents is in the public interest, including, but not limited to, release to the news media, scholars, authors and taxpayers seeking to determine whether those entrusted with the affairs of the government are honestly, faithfully, and competently performing their duties as public servants.” 51 O.S. § 24A.5.4.b. CfA is a non-profit watchdog group and the records requested relate to the issue of whether public servants honestly, faithfully and competently performed their duties. The subject of this request will likely contribute to a better understanding of whether the State Auditor uncovered any evidence of criminal wrongdoing regarding LICRAT’s management of the Tar Creek superfund site. Therefore, CfA’s request clearly falls within this provision of the ORA and no search fee should be charged for this request.

Should a fee waiver or reduction of fees not be available, CfA agrees to pay up to \$100 for copies of the requested records. If copying fees are expected to exceed this amount, please contact me.

Finally, I welcome the opportunity to discuss with you whether and to what extent this request can be narrowed or modified to better enable the Office of the State Auditor & Inspector to process it. I can be reached at 202.780.5750, or dstevens@campaignforaccountability.org. If possible, please send the requested records to me via email. Otherwise, please mail them to me at Campaign for Accountability, 611 Pennsylvania Ave., SE, #337, Washington, DC. 20003.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan E. Stevens", with a long horizontal flourish extending to the right.

Daniel E. Stevens
Executive Director

EXHIBIT A



Oklahoma State Auditor & Inspector

2300 N. Lincoln Blvd. • State Capitol, Room 100 • Oklahoma City, OK 73105 • Phone: 405.521.3495 • Fax: 405.521.3426

February 24, 2015

The Honorable Scott Pruitt
Oklahoma Attorney General
313 NE 21st Street
Oklahoma City, OK 73105

Re: Request to release Special Audit - LICRAT

Dear General Pruitt:

The Office of the State Auditor & Inspector is respectfully requesting that the Office of Attorney General grant its release of the Lead-Impacted Communities Relocation Assistance Trust (LICRAT) Special Audit.

The summation of our Special Investigation of LICRAT was transmitted to your office in January 2014.

Sincerely,

Gary A. Jones, CPA, CFE
Oklahoma State Auditor & Inspector

EXHIBIT B



E. SCOTT PRUITT
ATTORNEY GENERAL

May 7, 2015

The Honorable Gary A. Jones
Oklahoma State Auditor and Inspector
2300 N. Lincoln Boulevard, Suite 100
Oklahoma City, Oklahoma 73105

Re: LICRA TRUST AUDIT

Dear Mr. Jones:

The Oklahoma Attorney General's Office has reviewed your request for authorization to publish the Oklahoma State Auditor and Inspector's audit of LICRAT conducted per a formal request by our office made pursuant to our authority under Title 74 O.S. § 18f. Upon review of the audit and other relevant documents, the Oklahoma Attorney General's Office does not authorize the release of said audit. Specifically, our office is concerned about publication of unsubstantiated criminal allegations against private citizens. If you have any additional question or concerns, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Scott Pruitt".

E. SCOTT PRUITT
ATTORNEY GENERAL



EXHIBIT C



Oklahoma State Auditor & Inspector

2300 N. Lincoln Blvd. • State Capitol, Room 100 • Oklahoma City, OK 73105 • Phone: 405.521.3495 • Fax: 405.521.3426

May 14, 2015

The Honorable E. Scott Pruitt
Oklahoma Attorney General
313 NE 21st Street
Oklahoma City, OK 73105

Re: LICRA TRUST AUDIT

Dear General Pruitt:

We are in receipt of your letter dated May 7, 2015, in which you state you do *not authorize the release* of the LICRA TRUST Audit. It is our understanding that you are utilizing your prosecutorial discretion in your decision not to pursue criminal charges against any individual(s) associated with this significant expenditure of public funds.

In response, we 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.

In addition, 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.

We do not believe the audit report forwarded to your office is deficient with regard to content or supporting documentation. If you require substantiation of any information, we would be happy to provide such to your investigators and attorneys and hold that the documentation obtained in the course of this special audit is more than sufficient to substantiate its findings.

Sincerely,

Gary A. Jones, CPA, CFE
State Auditor & Inspector

From: Trey Davis <tdavis@sai.ok.gov>
Sent: Monday, November 13, 2017 4:13 PM
To: Daniel Stevens
Subject: RE: Open Records Act Request

Mr. Stevens:

Thank you for your email. As you are probably aware, State Auditor Gary Jones concurs fully with the position you have stated. We have made arguments along the same lines to the Oklahoma Office of Attorney General, to both previous AG Pruitt and current AG Mike Hunter.

The AG's office has taken the position that the section of the Oklahoma Open Records Act to which you refer is not applicable in this matter. The AG has determined that, as a result of its office requesting the Special Audit of LICRAT, the audit is investigatory and both the work papers and final audit report remain part of an investigation file that is not subject to the Act.

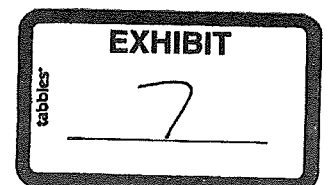
You may have seen the most recent correspondence on this issue from the AG's office. The letter is attached in the event you have seen it.

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 the expenditure of public funds.

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 that opinion has been overturned by a court of competent jurisdiction.

Sincerely,
Trey Davis

Director of Administration/CPE/Public Information
Office of the State Auditor and Inspector
State Capitol
2300 N. Lincoln Blvd., Room 100
Oklahoma City, OK 73105
405.521.3390 phone
405.521.3426 fax
tdavis@sai.ok.gov



C A M P A I G N F O R ACCOUNTABILITY

November 14, 2017

Samantha Hatch
Office of the Attorney General
State of Oklahoma
313 N.E. 21st Street
Oklahoma City, OK 73105

By Email: Samantha.hatch@oag.ok.gov

Re: Oklahoma Open Records Act Request

Dear Ms. Hatch:

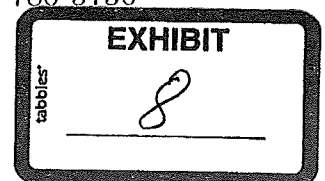
Pursuant to the Oklahoma Open Records Act, 51 O.S. 51, § 24A.1 et seq. ("ORA"), Campaign for Accountability ("CfA"), a nonprofit watchdog group, requests access to copies of certain audits and related documents regarding the Tar Creek Reclamation site and the Lead-Impacted Communities Relocation Trust ("LICRAT"). Specifically, CfA is requesting audits and related documents created as part of a review of LICRAT conducted by the Office of the Oklahoma State Auditor and Inspector in response to a request from the Attorney General of Oklahoma made pursuant to 74 O.S. § 18f.

On November 9, 2017, CfA sent an ORA request to State Auditor Gary Jones requesting these documents. On November 13, the State Auditor responded to CfA's ORA request stating that, while it believed the requested documents were subject to release under the ORA, the Attorney General's Office has instructed the State Auditor not to release the public documents because "the audit is investigatory and both the work papers and final audit report remain part of an investigation file that is not subject to the Act."

Based upon statements made by both the Attorney General's Office and the State Auditor, this special audit report addresses activities of public officials and a contractor receiving public funds under a contract with a public body.

The public policy of the ORA, found at 51 O.S. § 24A.2, states:

As the Oklahoma Constitution recognizes and guarantees, all political power is inherent in the people. Thus, 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. The Oklahoma Open Records Act shall not create, directly or indirectly, any rights of privacy or any remedies for violation of any rights of privacy; nor shall the Oklahoma Open Records Act, except as specifically set forth in the Oklahoma Open Records Act, establish any procedures for



protecting any person from release of information contained in public records. The purpose of this act is to ensure and facilitate the public's right of access to and review of government records so they may efficiently and intelligently exercise their inherent political power.

The requested documents are public records. While 51 O.S. § 24A.12 acknowledges that the Attorney General may keep “its litigation files and investigatory reports confidential,” 51 O.S. § 24A.20 provides that access “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.”

The State Auditor maintains the documents requested by CfA are public records under the ORA and, but for the Attorney General’s directive, would release them. The State Auditor has consistently released special investigation audits performed at the request of other agencies. *See e.g.* The Association of County Commissioners of Oklahoma Investigative Report (Feb. 29, 2016); Tulsa County Sheriff’s Office Inmate Trust Account Investigative Audit (Jan. 9, 2017); Ottawa Reclamation Authority Special Audit (Sept. 13, 2006).

Therefore, CfA requests that the Attorney General either provide the requested documents or direct the State Auditor to release the requested documents. *See* 51 O.S. § 24A.20 (“[A] law enforcement agency may deny access to a copy of such a record in an investigative file if the record or a true and complete copy thereof is available for public inspection and copying at another public body.”)

The Oklahoma Supreme Court has said that a public body claiming exemption from the requested disclosure has the burden to prove that an exemption applies. *Citizens Against Taxpayer Abuse, Inc. v. City of Oklahoma City*, 2003 OK 65, ¶ 12. The Court also has said government officials must consider in ruling on records requests that “disclosure is to be favored over a finding of exemption.” *Tulsa Tribune Co. v. Okla. Horse Racing Commission*, 1986 OK 24, ¶ 23. If all or some of this request is denied, please cite in writing the specific statutory exemption being claimed.

Where possible, please produce records electronically. CfA seeks records of any kind, including electronic records, audiotapes, videotapes, and photographs. This request includes any letters, emails, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. This request also includes any attachments to these records.

The ORA requires public bodies to provide “prompt, reasonable access to its records.” 51 O.S. § 24A.5.6. If the requested records are not to be produced on or before November 20, CfA requests that you detail the specific exemptions upon which you are relying to withhold these public records.

Fee Waiver Request

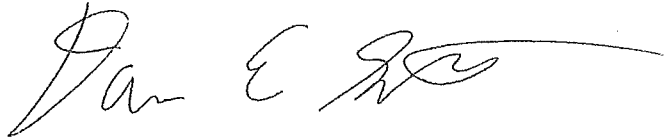
The Oklahoma Open Records Act prohibits the charging of a search fee when the release of the "documents is in the public interest, including, but not limited to, release to the news media, scholars, authors and taxpayers seeking to determine whether those entrusted with the affairs of the government are honestly, faithfully, and competently performing their duties as public servants." 51 O.S. § 24A.5.4. CfA is a non-profit watchdog group and the records requested, as the correspondence between the State Auditor and the Attorney General evidence, relate to the issue of whether public servants have honestly, faithfully and competently performed their duties. Further, the subject of this request will likely contribute to a better understanding of whether the State Auditor uncovered any evidence of criminal wrongdoing regarding LICRAT's management of the Tar Creek superfund site. Therefore, CfA's request clearly falls within 51 O.S. § 23A.5.4 and a fee waiver is appropriate.

Should a fee waiver not be available, CfA agrees to pay up to \$100 for copies of the requested records. If copying fees are expected to exceed this amount, please contact me.

Finally, I welcome the opportunity to discuss with you whether and to what extent this request can be narrowed or modified to better enable the Office of the Attorney General to process it. I can be reached at 202.780.5750, or dstevens@campaignforaccountability.org. If possible, please send the requested records to me via email. Otherwise, please mail them to me at Campaign for Accountability, 611 Pennsylvania Ave., SE, #337, Washington, DC. 20003.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan E Stevens", with a long horizontal flourish extending to the right.

Daniel E. Stevens
Executive Director



MIKE HUNTER
ATTORNEY GENERAL

Abby Dillsaver
General Counsel to the Attorney General

November 15, 2017

Executive Director Daniel E. Stevens
Campaign for Accountability
611 Pennsylvania Ave., SE #337
Washington D.C. 20003

Sent via electronic mail to dstevens@campaignforaccountability.org

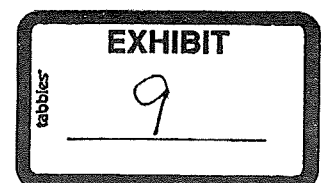
Re: Open Records Act request, our internal number 17 ORA 140

Dear Mr. Stevens:

This letter is in response to your Open Records Act request for the following:

[A]ccess to copies of certain audits and related documents regarding the Tar Creek Reclamation site and the Lead-Impacted Communities Relocation Trust ("LICRAT"). Specifically, CfA is requesting audits and related documents created as part of a review of LICRAT conducted by the Office of the Oklahoma State Auditor and Inspector in response to a request from the Attorney General of Oklahoma made pursuant to 74 O.S. § 18f..

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. We have reviewed our records in accordance with your request and have determined that any responsive documents which may exist would be exempt from disclosure under this section of the Open Records Act.



This response completes your Open Records Act request to the Oklahoma Attorney General's Office and closes your file.

Sincerely,

A handwritten signature in black ink, appearing to read 'Abby Dillsaver', with a long, sweeping horizontal flourish extending to the right.

Abby Dillsaver
GENERAL COUNSEL TO THE ATTORNEY GENERAL