

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 “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 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:



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

VERIFICATION

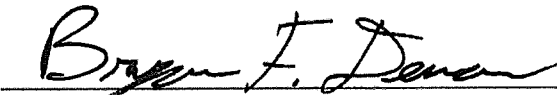
DISTRICT OF COLUMBIA) ss.

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.

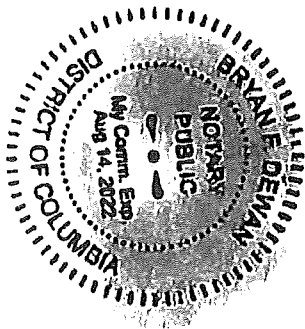


Notary Public
Commission Number _____

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:

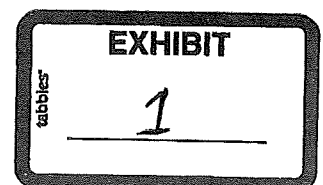
I have received the enclosed *Memoranda* from Jerry Morris, State Director for the Honorable Tom A. Coburn, U.S. Senator, expressing certain concerns brought to the attention of the Senator and his staff pertaining to the awarding of certain contracts for reclamation of properties in the Tar Creek area. 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?

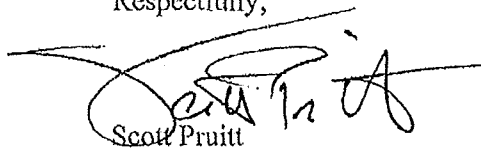
F. Is there any evidence that the successful bidder knowingly provided misstatements of existing or past material fact(s) to the Public Trust in support of its bid for the award of the contract, 21 O.S. 2001, § 1541.1 and 1541.2?

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,



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

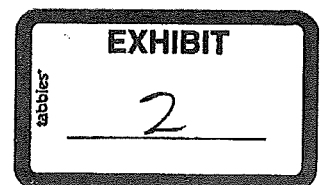
Dear General Pruitt:

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

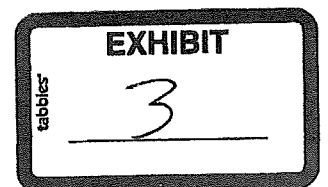
Re: LICRA TRUST AUDIT

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,

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.

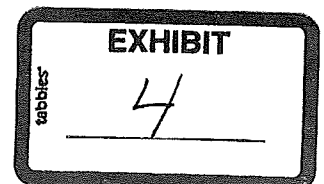
In response, we want to express our confusion as to your statement of concern *about publication of unsubstantiated criminal allegations against private citizens*. Our office has received no inquiries from you or your staff regarding the content of the audit report. We are not aware of any *unsubstantiated* 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.

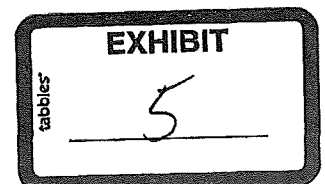
Therefore, this audit shall remain a confidential criminal investigatory file in the Office of the Attorney General and will not be released.

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](https://www.cenews.net/stories/1060059637), *E&E News*, September 5, 2017, available at <https://www.cenews.net/stories/1060059637>.

³ *Id.*

