

Subpoena Power for Auditor's Office for Performance Audits

Presentation in Budget and Policy Committee 4.1.24
Councilmembers Sawyer, Parady
and Denver Auditor's Office



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Current Law

The lack of sufficient means to obtain records impedes the Auditor's Office from completing its statutorily required duties.

- Denver law requires the Auditor's Office (AO) to conduct financial and performance audits of the city and its contractors in accordance with Generally Accepted Government Auditing Standards.
- Denver law grants the AO access to all city and contractor records necessary to conduct and fulfill these duties — without limitation.
- Denver's Auditor is the only elected official without subpoena authority.



Problem to Solve

Audit work

- Taking city partners or agencies to court is not an efficient or effective use of public resources. Currently that is the only recourse.

Audited parties — city agencies or contractors under audit — regularly refuse to produce necessary information.



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Existing mechanisms to obtain audit information are insufficient

No explicit recourse or remedy exists in Denver law that requires an audited party to provide the Auditor with requested records or sanctions an audited party for failing to comply with an information request from the Auditor's Office.

The Auditor, with the approval and cooperation of the City Attorney's Office, could sue a contractor for breach of contract to access records if the requisite audit clause is included in the parties' contract. However, the office does not want to pursue this option as it is lengthy, costly for all involved, and still does not guarantee production of records.

	Subpoena	Litigation
Burden	Takes two hours or less and is less burdensome for both the city and the community members involved	Could take as long as a year
Cost	Relatively inexpensive	Could incur significant costs for the city and community

EXAMPLES OF AUDIT INVESTIGATION IMPAIRMENT



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Audit impairment

AUDIT	RECORDS REQUESTED	RESISTANCE FACED
Denver International Airport – Westin Hotel	Requested case file documentation.	Information was never provided. The vendor wanted to provide edited, aggregated, and adjusted information. Neither the city nor the Auditor’s Office could determine whether the vendor was complying with the terms of its contract.
Denver Human Services	Requested information related to child welfare placements for Denver families from a state database.	Despite initial commitments from the agency, Denver Human Services delayed several months before fulfilling our requests for datasets from Trails, the statewide case management system that Denver County — and all other Colorado counties — are required to use. We eventually gained sufficient access and successfully protected the data.

CYBERSECURITY AND DATA PROTECTION



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Audit analytics and cybersecurity

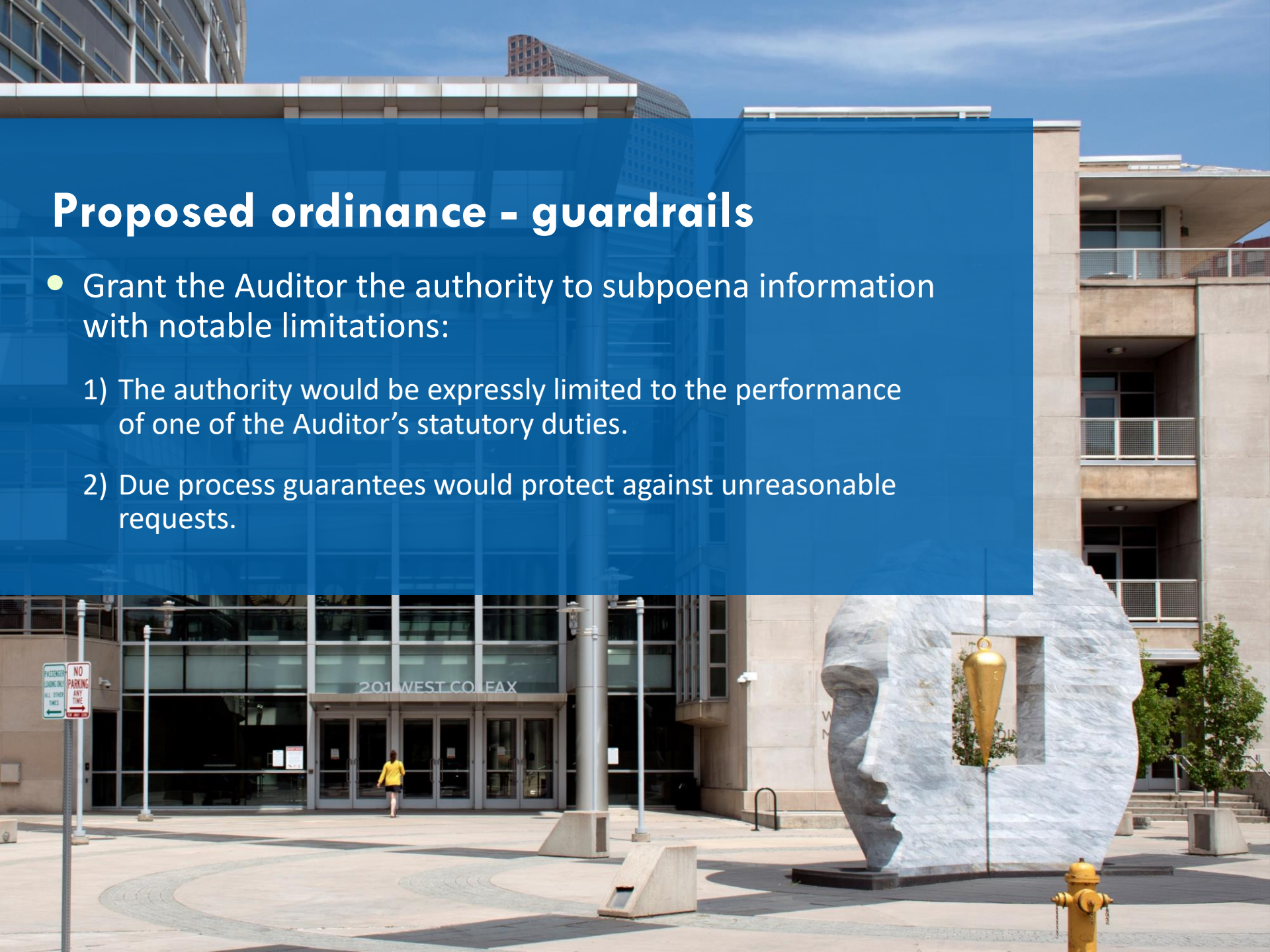
- Developing new data analytics tools to modernize how we audit
- The Denver Auditor's Office is held up as exemplary among our peers in government auditing across the country for using these analytics tools effectively.
- The Auditor's Office works daily with confidential, protected, proprietary, and sensitive data and records. All this information is protected under Denver law and is secure in the hands of our auditors and wage investigators.

PROPOSED ORDINANCE



Proposed ordinance - guardrails

- Grant the Auditor the authority to subpoena information with notable limitations:
 - 1) The authority would be expressly limited to the performance of one of the Auditor's statutory duties.
 - 2) Due process guarantees would protect against unreasonable requests.



Proposed ordinance

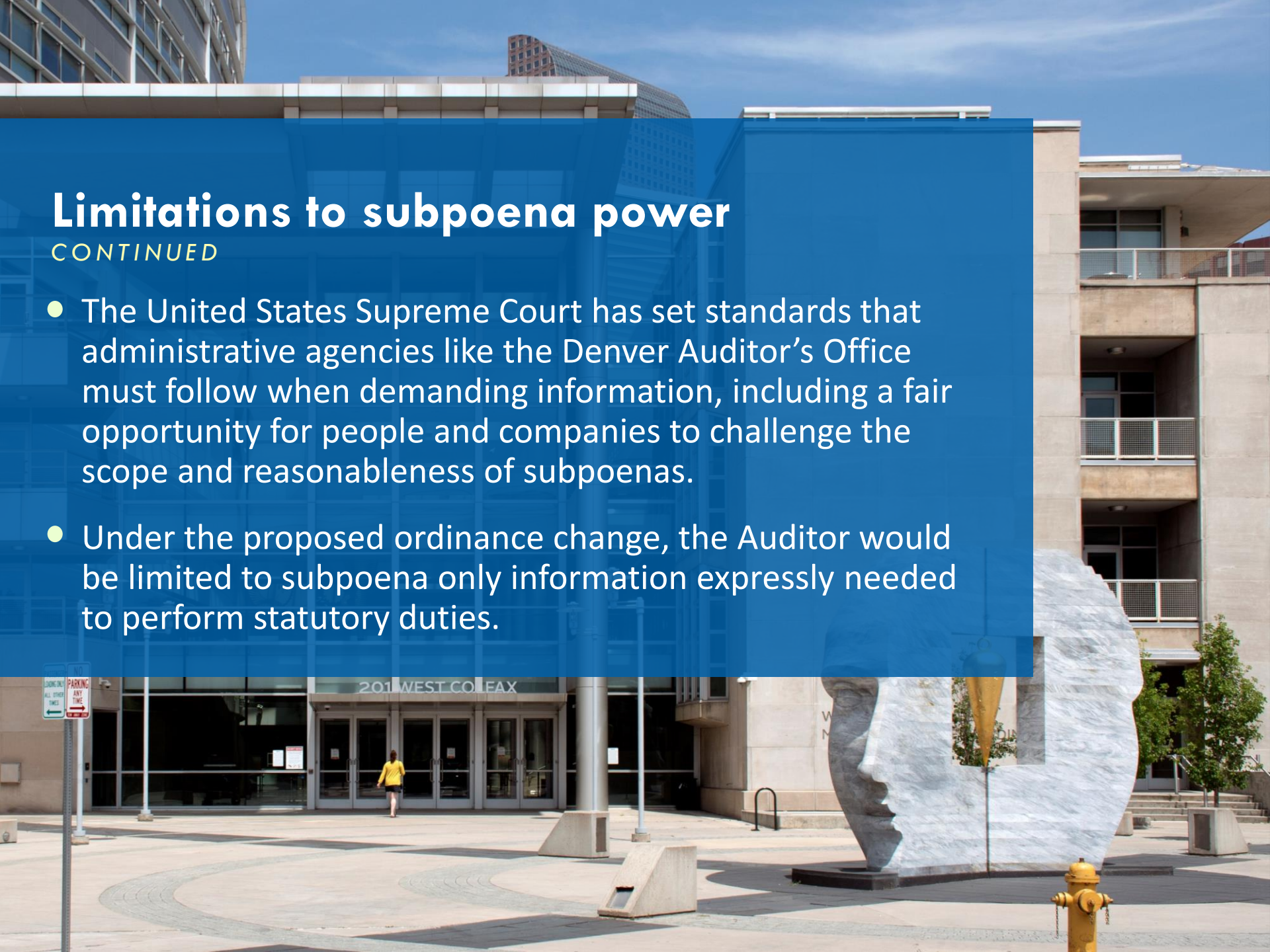
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- Provide the subpoenaed party the right to object before a neutral, third-party administrative hearing officer, at no cost to the subpoenaed party.
- The hearing officer could modify or quash a subpoena, upon a finding that the production would be unduly burdensome, that the requested records or tangible things are protected by a common law or statutory privilege, that the subpoena is vague, that the production would require disclosure of a trade secret or other confidential research, development, or commercial information, that production would violate privacy rights of the employer or a third party, or that the production would violate any other federal, state, or local law.
- The hearing officer may also issue a protective order governing the production of such records or tangible things in the hearing officer's discretion.
- Grant the Auditor authority to impose and waive penalties for a party's failure to comply with a subpoena.

Limitations to subpoena power

CONTINUED

- The United States Supreme Court has set standards that administrative agencies like the Denver Auditor's Office must follow when demanding information, including a fair opportunity for people and companies to challenge the scope and reasonableness of subpoenas.
- Under the proposed ordinance change, the Auditor would be limited to subpoena only information expressly needed to perform statutory duties.



INCORPORATING FEEDBACK



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Incorporating City Council and stakeholder input

- We have met with all members of the Denver City Council, as well as 17 additional stakeholders from business, labor, and the nonprofit community.
- The most notable feedback we received involved securely protecting confidential information. As a result, the bill includes additional data protection language to enshrine the standards we are already committed to using.
- Additionally, employers previously expressed concerns about the resources required to send a subpoena through the court system. As a result, the new bill includes use of an impartial hearing officer for efficient and accessible processes.

Protecting data

- The new bill reiterates the confidentiality protections included in the Charter-required Generally Accepted Government Auditing Standards.
- It also includes adherence to standards from the National Institute of Standards and Technologies Security and Privacy, thanks to the suggestion from Councilman Flynn and his team.



Protecting data

CONTINUED

- These additional protections will ensure that all future Auditors will be subject to the same requirements for the protection of confidential information.
- The audit software used to store workpapers has been vetted by the city's Technology Services agency and is compliant with ISO 27001, PCI DSS Level 1, SSAE-16/ISAE 3402 SOC 1, SOC 2 & 3, and HIPAA.
- The subpoena gives us efficient and effective access to information we are already given access to under the law, it doesn't expand our access to new types of information.

Protecting data

CONTINUED

- Only the assigned audit team conducting the audit or wage analysts will have access to confidential records.
- These teams already work with secure, protected, and confidential information daily, including social security numbers, addresses, personnel information, payroll information, and cybersecurity information. Subpoena power would not broaden their access, it would only support more efficient and effective access.

BEST PRACTICES



City or county audit functions with subpoena power

- City of Albuquerque, NM
 - City of Atlanta, GA
 - Broward County, FL
 - City of Chicago, IL
 - District of Columbia
 - City of Detroit, MI
- City and County of Honolulu, HI
 - City of Kansas City, MO
 - Montgomery County, MD
 - Palm Beach County, FL
 - City of Portland, OR
- City of San Diego, CA
 - City of Santa Fe, NM
 - Municipality of Monroeville, PA (Allegheny County)
 - Miami-Dade County, FL

Additional audit agencies that have the authority to issue subpoenas

- Department of Examiners of Public Accounts, Alabama
- Division of Legislative Audit, Alaska
- Division of Legislative Audit, Arkansas
- Office of State Auditor, California
- Office of the State Auditor, Colorado
- Office of the Auditor of Accounts, Delaware
- Department of Audits and Accounts, Georgia
- Office of the Public Auditor, Guam
- Office of the Auditor, Hawaii
- Office of the Auditor General, Illinois
- State Board of Accounts, Indiana
- Office of the Auditor of State, Iowa
- Office of the Auditor of Public Accounts, Kentucky
- Legislative Auditor, Louisiana
- Office of the State Auditor, Maine
- Office of Legislative Audits, Maryland
- Office of the Auditor General, Michigan
- Office of the Legislative Auditor, Minnesota
- Office of the State Auditor, Minnesota
- Office of the State Auditor, Mississippi
- Office of the State Auditor, Missouri
- Office of the Auditor of Public Accounts, Nebraska
- Office of the State Auditor, New Mexico
- Office of the State Comptroller, New York
- Office of the State Auditor, North Carolina
- Office of the Auditor of State, Ohio
- Office of the State Auditor and Inspector, Oklahoma
- Division of Audits, Oregon
- Office of the Comptroller, Puerto Rico
- Department of Legislative Audit, South Dakota
- Office of the Comptroller of the Treasury, Tennessee
- Office of the State Auditor, Utah
- Office of the State Auditor, Vermont
- Office of the Auditor of Public Accounts, Virginia
- Office of the State Auditor, Washington
- Legislative Audit Bureau, Wisconsin
- Department of Audit, Wyoming

BENEFITS



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Benefits

Using subpoena power would positively change the conversation with auditees.

- It would allow for more tools in the Auditor's toolbox during the process and better ensure the transparency and accountability the Auditor is meant to provide Denver constituents.
- It is a no-cost, more incremental solution to prevent audit delays.

Benefits

CONTINUED

- It would guarantee the production of records — not just levy fines and penalties with no guarantee of the outcome.
- It would encourage cooperation and permits the Auditor and the subpoenaed party to mutually agree to a time and scope for producing the requested records.

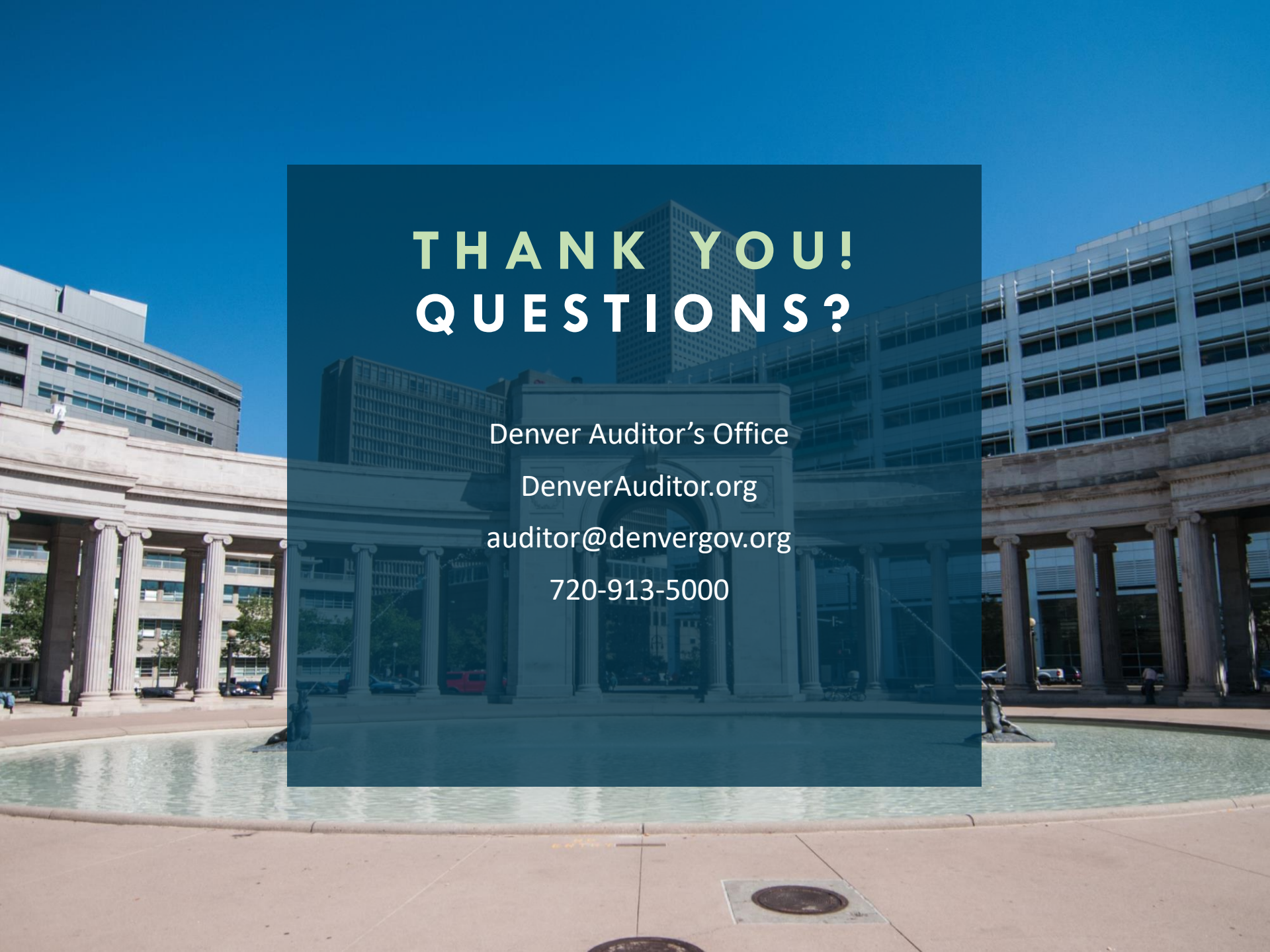
Recognition of the office

Every day, the Auditor's Office already successfully handles confidential, sensitive, and proprietary information.

The Auditor's Office has won many national awards for their work, including seven Knighton Awards from the [Association of Local Government Auditors](#):

- 2023 Knighton Distinguished Award — "[Homeless Encampments](#)"
- 2022 Knighton Exemplary Award — "[Residential Trash, Recycling, and Compost Services](#)"
- 2021 Knighton Distinguished Award — "[Airport Parking Shuttle System](#)"
- 2020 Knighton Exemplary Award — "[Neighborhood Sidewalk Repair Program](#)"
- 2019 Knighton Distinguished Award — "[Denver Preschool Program](#)"
- 2018 Knighton Distinguished Award — "[Affordable Housing](#)"
- 2015 Knighton Exemplary Award — "[Rocky Mountain Human Services](#)"
- ADA Access Award from Colorado Cross-Disability Coalition

Auditor O'Brien was also appointed to the U.S. Comptroller General's Advisory Council on Government Auditing Standards to advise on government auditing best practices for the nation.

A photograph of the Denver Auditor's Office building, a large classical structure with many columns, and a large fountain in the foreground. The image is overlaid with a semi-transparent dark blue rectangle containing text.

THANK YOU! QUESTIONS?

Denver Auditor's Office

DenverAuditor.org

auditor@denvergov.org

720-913-5000