





FOIL's purposes could easily be thwarted" (Matter of Capital Newspapers Div. of Hearst Corp. v Whalen, 113 AD2d 217, 221-222 [1985]), rev'd in part on other grounds, 69 NY2d 248 [1987]).

Here, it is clear that disclosure has been thwarted upon the pretense that the requested information was not in the physical possession of OAG. In this Court's view, the inquiry must return to the question as to whether the documents sought by petitioner pertain to official agency business generated or acquired by the former Attorney General in his official capacity, no matter where such documents were generated or located (see also Democratic National Committee v U.S. Dept. of Justice, 539 F Supp 2d 363, 367-68 [DCC 2008]; Bradford v. Dir., Employment Sec. Dept., 128 SW 3d 20, 28 [2003]). It is only under those circumstances that FOIL's mandate for "maximum access" to agency records can be facilitated (see Matter of Capital Newspapers Div. of Hearst Corp. v Whalen, 69 NY2d at 252).

With OAG citing no case law to support its contention that the use of personal e-mail accounts by government officials for agency-related business will serve to shield such accounts from disclosure under FOIL if those documents are not in its possession, this Court determines that pursuant to judicial precedent and the underpinnings of FOIL, the OAG has both the responsibility and the obligation to gain access to the private e-mail account of former Attorney General Spitzer to determine whether the documents contained therein should be disclosed to petitioner in accordance with its FOIL request.

This shall constitute the decision and order of the Court. The original decision and order and all other papers are being forwarded to the Albany County Clerk for filing. The signing of this decision and order shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the applicable provisions of that rule regarding notice of entry.

**SO ORDERED.**

Dated: Kingston, New York  
April 30, 2012

ENTER

  
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CHRISTOPHER E. CAHILL, JSC

Papers considered: Letter from Vincent A. Sama, Esq., dated August 1, 2011; Response from Adrienne J. Kerwin, Esq., dated February 3, 2012; Affidavit of James D. Folts dated November 19, 2010 with exhibits; Letter from Daphne Morduchowitz, Esq., dated February 10, 2012 with exhibits.