

Politicians' private emails not always private

By Jack Gillum, AP

WASHINGTON – Personal emails at the center of the brewing scandal for New Jersey Gov. Chris Christie may have remained secret, had the public and press relied solely on the state's open records law.

Emails disclosed this past week show a top Christie aide asking the Port Authority of New York and New Jersey to shut down three lanes on the busy George Washington Bridge, resulting in major backups for days last September. Those emails were leaked to reporters last week, even though one newspaper requested them nearly a month ago, only to be told they didn't exist.

The use of private emails adds Christie, a possible Republican presidential candidate in 2016, to a growing list of administrations that use private email accounts and other digital services to conduct official business. In turn, state and federal officials, regardless of political party, have sidestepped public records laws meant to keep government activities transparent.

The Record of Bergen, N.J., said it filed an open-records request last month asking for emails related to the Port Authority's decision to close the bridge lanes. The request specifically sought emails between David Wildstein, a Christie-appointed Port Authority official, and employees in the governor's office.

The newspaper received a response from Christie's office 10 days later, stating that the office "reviewed its records" but did not find any responsive emails. Weeks later, however, emails similar to what the *Record* asked for were made public

after being obtained under subpoena by state Assembly Democrats.

It's unclear why the governor's office didn't turn over apparently responsive emails from the Yahoo Mail account of Christie's former deputy chief of staff, Bridget Anne Kelly. She used the service to send messages to Wildstein, who ordered the bridge lanes closed. Representatives in Christie's office did not immediately return messages seeking comment Friday.

Public records laws, which can vary widely from state to state, govern how officials' documents and correspondence should be stored and released. But those laws largely have been slow to catch up to the digital age.

The result creates a gray area for how state and federal employees can use electronic services, such as personal email accounts and phone text messages, to conduct their business. It also creates murkiness for how those records should be disclosed to an inquisitive public.

For instance, the Associated Press found last year that some of President Obama's political appointees, including Health and Human Services Secretary Kathleen Sebelius, used secret, unpublished email accounts at work. Officials said the emails are still searchable under the federal Freedom of Information Act, although the AP was unable to confirm that practice.

Christie's Democratic predecessor, Jon Corzine, had fought to keep secret emails he exchanged with his ex-girlfriend, a former union leader. The state's highest court ruled in 2009 he could keep those messages private.

Across the Hudson River, New York Gov. Andrew Cuomo responded to a month-old AP request under the state's Freedom of Information Law by saying the governor has never written an email – state or personal – for public business. Instead, he uses an untraceable Blackberry message system.

Cuomo, a Democrat, later called it a way to prevent hacking. His office didn't immediately reply when asked Friday if he still uses that approach.

Across the nation, judges have been left to interpret how nascent technology fits into public records laws, often written before the dawn of the Internet.

In October 2012, the Alaska Supreme Court said state employees can use private emails, but that they must be preserved under records laws. The decision stemmed from the practice of former Gov. Sarah Palin's use of private emails in government. When Palin was the Republican vice presidential nominee in 2008, journalists fought for and received thousands of personal emails she initially claimed were exempt from disclosure.

During the 2012 presidential campaign, GOP nominee Mitt Romney confirmed news reports that when he stepped down as Massachusetts governor in 2007, he authorized top aides to buy and remove computer hard drives containing key data about his administration. The AP submitted a records request for his emails, but learned Romney and top aides had used private email accounts to conduct state business during his stint as governor.

Massachusetts officials said any Romney administration private emails used for state business belonged in Massachusetts archives. But Romney campaign officials refused to make the material public, citing a state court ruling that said Massachusetts governors retained full access over administration records.

The highest court in Arizona, a state with comparably expansive public records laws, said only private emails that have a "substantial nexus" with government activity can be released to the public. That stemmed from the *Arizona Republic* newspaper's 2005 request for emails from a county official who later went to prison for felony theft and fraud.

New Jersey law says officials can be disciplined and fined up to \$5,000 for violating the open-records act, and that agencies have to reimburse a requestor's attorney fees if the state loses an open-records lawsuit.

Associated Press writers Stephen Braun in Washington and Michael Virtanen in Albany, N.Y., contributed to this report.