



When you sign up for your municipality's e-mail news announcement system, are you subjecting your name and email to disclosure under FOIL? The Court of Appeals tackled that question recently, holding that a municipality is justified in denying a FOIL request for all of the names and emails of the subscribers to a municipal "e-news" system based on a violation of the subscribers' personal privacy. Let's take a look at that opinion and what else has been going on in the New York appellate courts over the last week.

COURT OF APPEALS

FREEDOM OF INFORMATION LAW, PERSONAL PRIVACY EXCEPTION

Matter of Russell v Town of Mount Pleasant, N.Y., 2026 NY Slip Op 00966 (Ct App Feb. 19, 2026)

Issue: Must a municipality disclose the individual names and corresponding email addresses of all subscribers to the Town's on-line news alert system under the Freedom of Information Law?

Facts: The petitioner submitted a FOIL request to the Town of Mount Pleasant seeking disclosure of the names and email addresses of all town residents who subscribed to the municipality's "E-news" notification system, which sends subscribers email alerts regarding town news, updates, and announcements. The petitioner tailored his FOIL request based on a prior Appellate Division decision that had granted disclosure of a similar municipal list, including a condition that petitioner would not reproduce, redistribute, or use the information for solicitation or commercial purposes.

The Town initially denied the request, claiming it did not possess the requested records. After the petitioner took an administrative appeal, the Town Supervisor expressed discomfort with disclosing the records without the residents' consent to making their information available, and advised he would wait for a legal opinion. After the time to decide the administrative appeal expired without the Town Supervisor taking action, the petitioner commenced an Article 78 proceeding to challenge the failure to disclose the subscriber list. "The Town responded that the records are exempt from disclosure under FOIL because disclosure would constitute an unwarranted invasion of personal privacy, as the residents' privacy interests outweigh any public interest in releasing the information. In support, the Town submitted an affidavit from the Town Supervisor, which described a 'Consent Form' that the Town sent out to E-news subscribers and digitally published. According to the Town Supervisor, 218 of the 220 respondents stated that they did not consent to the disclosure of their email addresses to others." The Town's cybersecurity manager also stated that "disclosure of the requested records could expose E-news subscribers to 'unnecessary cybersecurity risks,' including spoofing, by which someone with malicious intent could email them pretending to be the Town and seek to take advantage of them, exposing them to potential identity theft, account hacking, or a computer virus."

Supreme Court granted the petition and ordered disclosure subject to conditions. The Appellate Division, Second Department affirmed.

Holding: The Court of Appeals reversed, holding that the Town provided a sufficient basis to invoke the FOIL exception that permits withholding records to protect against an invasion of personal privacy. Noting that FOIL is meant to ensure open access to government records, the Court explained, however, that the statute "provides that an 'agency may deny access to records or portions thereof that . . . if disclosed would constitute an unwarranted invasion of personal privacy under Public Officers Law § 89 (2): Public Officers Law § 89 (2) (b), in turn, provides a non-exhaustive list of specific types of exempt information that does not expressly include names and email addresses submitted to obtain governmental correspondence, other than when such information is provided for tax purposes under Real Property Tax Law § 104. As the parties recognize, no enumerated type of information applies here . . . [W]hen none of the enumerated forms of unwarranted invasions of personal privacy apply, we must balance the privacy interests at stake against the public interest in disclosure of the information. The balancing of the interests at issue here lands squarely in favor of the subscribers' privacy interests."

The Court reasoned that "subscribers have a strong privacy interest in keeping their names and email addresses confidential to avoid unwanted and unwelcome communications, and to minimize the risk of cybersecurity threats resulting from disclosure of such information. An email address, and the corresponding holder's name, are commonly treated as personally identifying information (PII)." Indeed, the Court noted, "individuals share their email address with people they know, or in exchange for a particular benefit or information that they consent to receive. They assume and rely on a common understanding that those with whom they share their email address will maintain that information private from third parties and the public at large, unless otherwise agreed or implied. The fact that public and private repositories of names and corresponding email addresses customarily publish privacy policies or other notices regarding how they may use that information, including any potential disclosure as required by law or for governmental purposes, confirms that individuals assume their email addresses will be kept confidential by the government unless disclosure is legally mandated or consented to."

The subscribers' privacy concerns also reflect the ubiquitous use of email as a means of communicating highly sensitive private information. One's email account generally contains a large amount of personal data. For example, medical records, job applications, consumer purchase histories, tax returns, and credit card, bank account, and social security numbers are often embedded in emails, or in documents attached to emails. In addition, people often use their email addresses as a username or user ID to log in to many different websites or access online services. Moreover, email permits a sender to intrude upon the recipient with correspondence that may be unwelcome or intended to facilitate cyberattacks. Unsurprisingly, the Town Supervisor's affidavit confirmed that this common understanding of the private nature of email addresses was held by the vast majority of the Town's survey respondents, who indicated that they did not want their email addresses disclosed to petitioner or the public."

On the other side of the balance, the Court held, "there is no public interest served by disclosure here. Petitioner argues only that disclosure will increase public engagement on issues of community concern. This argument is unpersuasive for several reasons. First, it is more likely that disclosure will have either no or a negative effect on public engagement, as people across the State would be hesitant to sign up for their municipality's email alerts due to privacy and security concerns if they knew their email address might be disclosed to third parties upon request and without their consent. Second, the Town's E-news service provides only one-way communications, and its existing subscribers may have no interest in political discourse. Indeed, those who do not want to be contacted by petitioner or anyone other than the Town likely will unsubscribe from E-news, thus reducing rather than maintaining or improving public engagement. The result would therefore undermine the animating purpose of FOIL to make the workings of government transparent and accessible to the public. Nothing is gained by the public from disclosure of these subscribers' email addresses and accompanying names."

Therefore, the Court concluded that the Town properly declined to disclose the subscribers' names and emails under the personal privacy exemption.

TORTS, ASSUMPTION OF DUTY OF CARE

Beadell v Eros Mgt. Realty LLC, 2026 NY Slip Op 00962 (Ct App Feb. 19, 2026)

Issue: Did the owner and operator of a hotel assume a duty of care to a suicidal hotel guest by agreeing to requests from family members, first, to check on him in his hotel room and, second, to immediately call for emergency assistance?

Facts: While staying at a hotel in Manhattan, a hotel guest texted his wife that he intended to end his life. At 6:40 PM, the guest's sister called the hotel's front desk expressing concern that her brother might be suicidal after he sent a photo of himself looking down from a ledge, and requested that hotel staff check on him. Hotel staff went to the guest's 11th floor room, observed empty liquor bottles and pill containers, but the guest told them he was "fine" and did not wish to be disturbed. The clerk called the sister back at 6:46 PM and reported that they checked on him and he was fine.

At 7:12 PM, after receiving what appeared to be a goodbye message, the sister called again, this time identifying herself as a mental health professional, stating the situation was escalating, and asking for police to be contacted immediately. Hotel staff agreed to contact police but called back to ask whether the family actually wanted the police involved, to which the sister responded that she did. The hotel staff ultimately did not call 911 until 7:37 PM, while the assistant manager simultaneously went to the adjacent police station. The guest was found on the window ledge appearing intoxicated and emotionally distraught, and despite a police officer's attempts to persuade him to come inside, he jumped to his death shortly before 8:00 PM.

The guest's family then commenced a negligence and wrongful death action against the hotel owner and operator, alleging that defendants assumed a duty to take preventive measures in response to warnings about the guest's suicidal ideation and failed to properly discharge that duty. "Defendants moved for summary judgment, asserting that they had not assumed any duty to decedent and that they were in no way responsible for his death . . . In opposition, plaintiffs argued that defendants assumed the duty to contact 911 immediately upon promising to do so in the 7:12 p.m. call, and that the negligent delay in obtaining police assistance resulted in the loss of opportunity to prevent decedent's suicide."

Supreme Court denied summary judgment, holding that the hotel "had assumed a duty to take reasonable steps to prevent decedent from harming himself and had met their prima facie burden of establishing that they fulfilled the assumed duty. The court also concluded that plaintiffs raised triable issues of fact in opposition to the motion as to whether defendants exercised due care in discharging that duty, particularly with respect to whether the police were contacted during a reasonable time and whether the 25-minute delay in calling for emergency assistance significantly contributed to decedent's suicide." The Appellate Division, First Department reversed, holding that the hotel "met their burden of establishing that they did not assume a duty to prevent decedent's suicide, observing that the hotel did not isolate or take control of decedent, or put him in a more vulnerable position than he would have been in had the hotel never attempted to help."

Holding: The Court of Appeals affirmed the grant of summary judgment, on slightly differing reasoning than the First Department, holding that the hotel had assumed a duty of care by agreeing to check on the guest, and satisfied that duty by doing so, but did not assume a duty to call for emergency assistance immediately after the guest responded to the welfare check that he was fine. The Court explained, "to be held liable under an assumed duty theory, it is not enough that defendants undertook to perform a service and did so negligently, but their conduct in undertaking the service must have somehow placed decedent in a more vulnerable position than he would have been in had defendants never taken any action at all. One way in which an undertaking may increase a party's vulnerability is by lulling

them into a false sense of security; thus, the assumed duty analysis incorporates an aspect of reliance. Where a plaintiff alleges reliance on a defendant's undertaking, it must have been reasonably foreseeable that the plaintiff would tailor their own conduct in response to defendant's undertaking." "Whether an actor has a duty of reasonable care based on an undertaking thus depends on whether the actor's conduct increases the risk of harm, or another relies on the actor's exercising reasonable care."

Applying these principles, the Court held, "[a]ny duty defendants may have assumed in agreeing to check on decedent was satisfied. The hotel staff determined that he was not on the balcony, the roof or the ledge of his own room. They also spoke with decedent face-to-face, at which point he advised that he was fine and did not want to be disturbed. Any assumption of a duty in this regard did not include the obligation to provide a detailed report of observations of decedent's condition or the state of his room to his family members. Nor did it require hotel staff members, who had neither expertise in mental health nor information about decedent's mental health history, to make an independent assessment about the risk decedent may have posed to himself or to take further action against his wishes based on any such assessment."

With respect to the plaintiffs' argument that the hotel had a duty to immediately summon emergency assistance after the 7:12 p.m. call, the Court held, "Decedent's mere presence in the hotel did not give defendants control over his person, nor did their actions affirmatively place him in a more vulnerable position than he was when they undertook to act. Under the circumstances, plaintiffs failed to raise a material question of fact as to whether it was reasonably foreseeable that they would forgo other efforts to summon aid in reliance on defendants' promise to call 911. Even if plaintiffs could rely on the hotel's representations that there would be a call to 911, it was not reasonable for the family to expect that any such call would be made with the desired immediacy. This became evident when the manager called decedent's sister back and expressed reluctance to involve the police, a circumstance that still did not induce the family members to act on their own behalf. Significantly, defendants' promise to call 911 did not prevent decedent's family members from undertaking their own efforts to secure professional assistance nor otherwise obstruct such efforts, for example, by refusing to confirm decedent's presence in the hotel. Indeed, an emergency call to 911 from a trained mental health worker, like decedent's sister, might be expected to enhance response time to the hotel."

Finally, the Court explained, "we would be reluctant to recognize a legal duty in this type of case on policy grounds . . . Recognizing an assumed duty in these circumstances would create a specter of liability that discourages rather than encourages hotels from offering assistance to guests contemplating suicide. Because hotels owe no inherent duty to provide such aid, the most rational and likely way for them to avoid liability would be to implement formal policies against their employees involving themselves in efforts to render potentially life-saving aid to guests. In keeping with the State's interest in preserving life and preventing suicide, the better rule is one that incentivizes both hotels and concerned parties to do all they reasonably can in these difficult and emotionally charged situations."

CasePrepPlus | March 6, 2026

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