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COURT OF APPEALS  
STATE OF NEW YORK

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RUSSELL,

Respondent,

-against-

NO. 6

TOWN OF MOUNT PLEASANT,

Appellant.

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20 Eagle Street  
Albany, New York  
January 7, 2026

Before:

CHIEF JUDGE ROWAN D. WILSON  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE MICHAEL J. GARCIA  
ASSOCIATE JUDGE MADELINE SINGAS  
ASSOCIATE JUDGE ANTHONY CANNATARO  
ASSOCIATE JUDGE SHIRLEY TROUTMAN  
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

DARIUS P. CHAFIZADEH, ESQ.  
HARRIS BEACH MURTHA CULLINA PLLC  
Attorney for Appellant  
445 Hamilton Avenue  
Suite 1206  
White Plains, NY 10601

JAMES C. RUSSELL, PRO SE

Chrishanda Sassman-Reynolds  
Official Court Transcriber

1 CHIEF JUDGE WILSON: Good afternoon. The first  
2 case on today's calendar is Russell v. Town of Mount  
3 Pleasant.

4 Counsel?

5 MR. CHAFIZADEH: Thank you, Your Honor.

6 Good afternoon, Your Honors. My name is Darius  
7 Chafizadeh. I'm an attorney with the law firm Harris Beach  
8 Murtha Cullina. I'd request one minute for rebuttal, Your  
9 Honor.

10 CHIEF JUDGE WILSON: Yes.

11 MR. CHAFIZADEH: Thank you.

12 So this case is about whether the town  
13 supervisor, the Town of Mount Pleasant, who denied a FOIL  
14 request submitted by the petitioner-respondent, Mr.  
15 Russell, based on the privacy exception under 89.2(b)(iii)  
16 was proper.

17 The lower court, the Supreme Court Trial Court  
18 Westchester County, said that it wasn't. The Appellate  
19 Division Second Department also said it wasn't. We believe  
20 those decisions were an error. And why? The reason why we  
21 believe is because the public benefit of receiving the  
22 email lists that were maintained by the Town of Mount  
23 Pleasant to notify the public of all of the happenings in  
24 the town, whether it be a public hearing, whether it be a  
25 water main break, whether it be recreation department

1 things, was something that should not be turned over to  
2 someone from the public, even if they say we're not going  
3 to use it for any commercial purpose.

4 JUDGE GARCIA: Counsel, I wasn't sure from the  
5 record, but I saw a reference somewhere, I think, that at  
6 some point the town said that they were making these emails  
7 available to selected vendors; is that right?

8 MR. CHAFIZADEH: I don't believe so, Your Honor.

9 JUDGE GARCIA: Okay.

10 MR. CHAFIZADEH: Not that I'm aware of.

11 JUDGE GARCIA: So they've never released this  
12 email list anywhere else other than to use it for the  
13 purpose you said?

14 MR. CHAFIZADEH: Correct.

15 JUDGE GARCIA: Thank you.

16 MR. CHAFIZADEH: Correct. Correct.

17 Now, this - - -

18 JUDGE RIVERA: How long is the list?

19 MR. CHAFIZADEH: I'm sorry, Your Honor?

20 JUDGE RIVERA: How long is the list? Do you  
21 know? Is it in the record? I only want to know if it's in  
22 the record.

23 MR. CHAFIZADEH: I don't believe it's in the  
24 record, Your Honor. I do know, but it's not in the record.

25 JUDGE RIVERA: Okay.

1 MR. CHAFIZADEH: There was - - -

2 JUDGE HALLIGAN: Are there any representations  
3 that were made when the addresses were collected about  
4 whether they would be kept private or shared or anything  
5 like that?

6 MR. CHAFIZADEH: Nothing specifically in the  
7 record. There was a request made after the fact when Mr.  
8 Russell - - -

9 JUDGE HALLIGAN: That I saw.

10 MR. CHAFIZADEH: You saw those - - -

11 JUDGE HALLIGAN: But at the time of collection,  
12 the record doesn't reflect any?

13 MR. CHAFIZADEH: It does not, Your Honor. It  
14 does not.

15 Now, there's a few issues. The state statute,  
16 the Public Officers Law 89.2(b) - - -

17 JUDGE RIVERA: Is there anything in the record  
18 about whether or not the list is solely private emails? Or  
19 does it also include what one would think are our  
20 commercial emails?

21 MR. CHAFIZADEH: It's not - - -

22 JUDGE RIVERA: A business email?

23 MR. CHAFIZADEH: It's not in the record if  
24 someone has a, you know, law firm or business email  
25 address. It's not in the record.

1 JUDGE TROUTMAN: And at the time that the people  
2 provided their email addresses, was it clear that they were  
3 providing them for a specific purpose?

4 MR. CHAFIZADEH: Yeah. And the purpose was to  
5 get notifications from the town.

6 JUDGE TROUTMAN: Were they advised that it would  
7 be used beyond the town - - -

8 MR. CHAFIZADEH: No.

9 JUDGE TROUTMAN: - - - for any other purpose?

10 MR. CHAFIZADEH: No. It wasn't planned to be  
11 used for any other purpose.

12 CHIEF JUDGE WILSON: Could someone who didn't  
13 live in the town - - - like me, could I have signed up for  
14 the notices?

15 MR. CHAFIZADEH: You probably could, but people  
16 really don't care what's happening in the Town of Mount  
17 Pleasant unless you live there.

18 CHIEF JUDGE WILSON: Well, maybe you used to live  
19 there and you moved out?

20 MR. CHAFIZADEH: Yeah. You could - - -

21 CHIEF JUDGE WILSON: You have a child who lives  
22 there, and you don't?

23 MR. CHAFIZADEH: Yeah, you could. Yeah, you  
24 could.

25 CHIEF JUDGE WILSON: I mean, I'm just asking

1           whether it's anything structurally that prevented somebody  
2           who lived outside from asking for these updates?

3                       MR. CHAFIZADEH: No, there's not. No, there's  
4           not. Yeah.

5                       JUDGE RIVERA: Well, everything in the  
6           correspondence is posted on the website? That's what I - -  
7           - how I read the record, but maybe I'm wrong.

8                       MR. CHAFIZADEH: Everything in the  
9           correspondence? I'm - - - I'm - - -

10                      JUDGE RIVERA: Whatever is in the email. I  
11           thought it was just to facilitate what's already on the  
12           website.

13                      MR. CHAFIZADEH: No.

14                      JUDGE RIVERA: That is to say, is there anything  
15           that was ever sent in an email that, if I had just gone to  
16           the website, I would not have found it?

17                      MR. CHAFIZADEH: Not in the record specifically,  
18           Your Honors. But there is - - - there could be a  
19           recreation department notice that - - - you know, that  
20           today is Seniors Day.

21                      JUDGE RIVERA: Right. That would not have been  
22           on the website?

23                      MR. CHAFIZADEH: It may not have been.

24                      JUDGE RIVERA: I see.

25                      MR. CHAFIZADEH: It may not have been.

1 JUDGE SINGAS: So how frequently - - -

2 MR. CHAFIZADEH: It's not - - - I don't think  
3 it's clear from the record, though.

4 JUDGE SINGAS: How frequently or infrequently was  
5 this used? Like, every day is there an announcement? A  
6 couple of times a month?

7 MR. CHAFIZADEH: Yeah. Probably the latter, Your  
8 Honor. It's not something that happens every day. It will  
9 - - - will happen more than a few times a month, I would  
10 think. If there's a public hearing, like, I know,  
11 yesterday I was - - - I looked and there was something that  
12 came up for a public hearing on the 13th. And that - - -

13 JUDGE CANNATARO: Was this a limited issue  
14 subscription? Was it because there was some particular  
15 issue that was being hotly debated? Or would this provide  
16 updates about town business on a regular periodic basis?

17 MR. CHAFIZADEH: The latter, yes. Regular  
18 periodic. And it happens everywhere. Not in the record,  
19 but I know my school district where I live, I get emails  
20 from them of what's happening when the basketball game is  
21 for the championship or whatever it is. It happens  
22 everywhere throughout the state.

23 JUDGE RIVERA: Other than the website, is there  
24 also a social media presence that the town has?

25 MR. CHAFIZADEH: The town is a separate social

1 media presence on Facebook, and I think - - - and I don't  
2 know what other.

3 JUDGE RIVERA: And would the correspondence on  
4 the email also go on that or no?

5 MR. CHAFIZADEH: It could. Yeah, yeah, yeah,  
6 yeah. Yes, it could, Your Honor.

7 So what could be blasted out to the community in  
8 the emails would also be placed on the web - - - on - - -  
9 excuse me - - - Facebook.

10 JUDGE RIVERA: And there are other ways to  
11 communicate this without having individual emails?

12 MR. CHAFIZADEH: Correct. Correct. Yes, there  
13 are. Absolutely.

14 JUDGE RIVERA: Okay.

15 MR. CHAFIZADEH: And the individual emails are  
16 the thing that concern the town, and most specifically, the  
17 supervisor, when he wrote his email. And the statue - - -

18 JUDGE RIVERA: Just one more question.

19 MR. CHAFIZADEH: Sure.

20 JUDGE RIVERA: The town doesn't use these emails  
21 for any other purpose other than these blasts - - -

22 MR. CHAFIZADEH: No other purpose.

23 JUDGE RIVERA: - - - of information?

24 MR. CHAFIZADEH: No other purpose. Okay.

25 The - - -

1 CHIEF JUDGE WILSON: The town - - - sorry. The  
2 town might have these same email addresses for some other  
3 purpose? Not this collection of them, but there may be  
4 some duplication between email addresses that were  
5 collected for some other reason.

6 MR. CHAFIZADEH: This list is used to blast out,  
7 definitely. Would we have other people's email addresses?  
8 For instance, could you give it to the building department  
9 for some other reason? Yeah.

10 CHIEF JUDGE WILSON: Right. To get a building  
11 permit? And they would have - - - it would happen to be  
12 the same address as one that's in this blast, or it might  
13 not.

14 MR. CHAFIZADEH: Right. If they filed it as part  
15 of the - - - you know, the building permit application.

16 CHIEF JUDGE WILSON: Yeah. Yep.

17 MR. CHAFIZADEH: Right. Or a tax assessor thing  
18 or something like that. Yes. Yes, Your Honor. Yes.

19 JUDGE RIVERA: But it would be the individual  
20 doing that, not - - - just to be clear. It's not like  
21 internally you're sharing it with some other department or  
22 something like that?

23 MR. CHAFIZADEH: The town's kind of small, but  
24 they don't really share.

25 JUDGE RIVERA: They don't do that?

1 MR. CHAFIZADEH: If you're in the building  
2 department or engineering department, maybe there's working  
3 together because projects get worked together on both  
4 sides, but it's not something that's shared with the whole  
5 town. If you fill out an application and you put your  
6 email address down, it's not something that's - - - you  
7 know, widely dispersed to the town employees. No.

8 JUDGE CANNATARO: Did the town provide any  
9 assurances of privacy with respect to the addresses, other  
10 than the sort of general kind of disclaimer that - - - you  
11 know, as the law might require?

12 MR. CHAFIZADEH: No. No. There's no specific -  
13 - - prior to getting the email addresses back in 2021 when  
14 this happened, there was no details of that. And this was  
15 kind of a new thing that they were doing back in - - - and  
16 I don't know when it started exactly, but it's evolved over  
17 time and we're putting those in now. But at the time,  
18 there was - - -

19 JUDGE TROUTMAN: When the town releases the - - -  
20 if the - - - when the town releases these email addresses,  
21 assuming that they grant the request and there are agreed-  
22 upon conditions, how do you - - - how does the town enforce  
23 them? In other words - - -

24 MR. CHAFIZADEH: I'm sorry, Your Honor.

25 JUDGE TROUTMAN: - - - if the town says that a

1 person who requests the information can have it subject to  
2 certain conditions, is there a way to make sure that those  
3 addresses are just used only by that person, not  
4 disseminated further, et cetera?

5 MR. CHAFIZADEH: No, Judge. I don't - - - I  
6 don't believe there is. That's the problem that we see  
7 from the town's perspective is that these email addresses  
8 are out there in the public domain now. Personal email  
9 addresses.

10 JUDGE HALLIGAN: What's the - - - can you speak  
11 to the risk? You suggest that there are risks from the  
12 disclosure. What are those?

13 MR. CHAFIZADEH: Right. So we had an expert, our  
14 expert, James Canepa, who was the town's IT expert at a  
15 company called Logically, that's been the town's expert for  
16 about ten to twelve years. And on record page 319 he set  
17 forth what the town does to ensure that - - -

18 JUDGE HALLIGAN: Right. Right. But I mean, what  
19 are you concerned about happening? So you disclose the  
20 addresses to someone and then they do what? They could, I  
21 assume representations notwithstanding, pass - - - I'm not  
22 suggesting that - - -

23 MR. CHAFIZADEH: Right.

24 JUDGE HALLIGAN: - - - that has happened here - -  
25 - but could pass them along to somebody else. What are the

1 security - - - cybersecurity risks specifically, you're  
2 worried about?

3 MR. CHAFIZADEH: Sure. There's a few things.  
4 Number one is notwithstanding that someone says I'm not  
5 going to turn them over - - - I'm not saying Mr. Russell  
6 would do that, but someone else could. Person B, who may  
7 live in the town, may not live in the town, seek these  
8 email addresses, get them, and then they sign the thing  
9 that say I'm not going to use it for any other reason, and  
10 they could.

11 JUDGE HALLIGAN: Okay.

12 MR. CHAFIZADEH: I mean, if - - -

13 JUDGE HALLIGAN: And so the harm there is what?  
14 A privacy interest?

15 MR. CHAFIZADEH: It's - - -

16 JUDGE HALLIGAN: Is there anything else?

17 MR. CHAFIZADEH: Yeah. It's a privacy interest.  
18 The issue that we - - - that we would have is you have  
19 personal email addresses, we have the firewalls, the  
20 antivirus security. An individual may not have that. That  
21 list then becomes available and then the phishing occurs.  
22 We all get it even in our work email addresses. But the  
23 home email addresses that don't have the same type - - -

24 JUDGE CANNATARO: But you - - - you have to  
25 relate this to privacy, right? Privacy. Because that is

1 the statutory consideration.

2 MR. CHAFIZADEH: Correct.

3 JUDGE CANNATARO: I don't think it says anything  
4 about security - - -

5 MR. CHAFIZADEH: Correct.

6 JUDGE CANNATARO: - - - in - - - in the Public  
7 Officer's Law. So how is - - - how are these security  
8 considerations integrated with a privacy concern?

9 MR. CHAFIZADEH: I think they are entwined, Your  
10 Honor. I think that someone's privacy being hacked, their  
11 computer hacked, and email addresses hacked, and their  
12 livelihood taken, which happens every day from different -  
13 - -

14 JUDGE CANNATARO: Right. Because, let's face it,  
15 as much as we may try to keep - - - we citizens of New York  
16 might try to keep our email addresses limited in terms of  
17 who has them, people do get their hands on them. You know?

18 MR. CHAFIZADEH: Yeh.

19 JUDGE CANNATARO: That - - - it just happens. As  
20 a matter of fact, in the private sector, there are  
21 companies that aggregate and sell that information as a  
22 commercial practice. So I'm just - - - you know, I get  
23 the security concern, but A, it's extra-statutory, I think.  
24 And B, if you think your effort to keep people safe from  
25 malicious users of this information is going to really make

1 a difference, I think you might be mistaken in that.

2 MR. CHAFIZADEH: Yeah. I've been told I've been  
3 mistaken before, Your Honor. But I think the privacy issue  
4 and the security issue go one in - - - hand in hand. I  
5 think they - - -

6 JUDGE SINGAS: So is it your position that a town  
7 should never give away a citizen's email address? Because  
8 those interests that you're speaking about would be true no  
9 matter what? Like, if I give my email address, there's  
10 this possibility in the future that someone might use that  
11 for some cybersecurity attack.

12 MR. CHAFIZADEH: Right.

13 JUDGE SINGAS: So I think using your logic, that  
14 that would never be appropriate to hand over. Is that your  
15 position?

16 MR. CHAFIZADEH: I think personal email  
17 addresses, Your Honor. Yes. I do believe that. Now,  
18 people do - - -

19 JUDGE HALLIGAN: So for example, if there's a  
20 question - - - you know, a FOIL request in which a citizen  
21 is looking to figure out who attempted to influence a  
22 government decision, and it's attempting to do that by  
23 identifying emails that were sent back and forth. Your  
24 position is even in that case where the email address would  
25 be what reveals the identity of someone who is in - - -

1 communicating with a government official, not subject to  
2 any other exemptions, that wouldn't be disclosable?

3 MR. CHAFIZADEH: That - - - that would be a close  
4 call. I think this is - - - you know - - -

5 JUDGE HALLIGAN: Maybe not a blanket no-email-  
6 address rule?

7 MR. CHAFIZADEH: Yeah. Yeah. I think you'd have  
8 to look at it on an ad hoc basis. I think this is a - - -

9 JUDGE TROUTMAN: How does the public interest  
10 come into play, if at all?

11 MR. CHAFIZADEH: The public - - - I'm not sure  
12 there's any public interest in having - - - you know, X  
13 number of email addresses that Mr. Russell or anyone would  
14 be seeking. I don't see any - - -

15 JUDGE HALLIGAN: Do you have any - - -

16 MR. CHAFIZADEH: - - - any public interest.

17 JUDGE HALLIGAN: - - - concern that - - -

18 MR. CHAFIZADEH: I'm sorry.

19 JUDGE HALLIGAN: Sorry.

20 MR. CHAFIZADEH: No. I'm sorry, Your Honor.

21 JUDGE HALLIGAN: I didn't mean to - - - do you  
22 have any concern that if the email addresses are disclosed  
23 and deemed disclosable pursuant to a FOIL request, that  
24 that might chill the willingness of citizens to participate  
25 by turning over their email addresses?

1 MR. CHAFIZADEH: Definitely. I think the 218  
2 people that responded that said, no way, don't give my  
3 email address out, is just a small - - - you know,  
4 computation of the people that do not want to do that.

5 JUDGE RIVERA: Yes. But all you're doing is  
6 blasting information out.

7 MR. CHAFIZADEH: Right.

8 JUDGE RIVERA: And you say the information is,  
9 for the most part, elsewhere to be found. And although I'm  
10 still an old-timer using email - - -

11 MR. CHAFIZADEH: Some people don't - - -

12 JUDGE RIVERA: - - - most people do use the  
13 social media and all these other what - - - I think there's  
14 a thing called X and Twits and all of that. But in any  
15 event, I want to ask you something - - -

16 MR. CHAFIZADEH: Sure.

17 JUDGE RIVERA: - - - two other things. Does the  
18 town ever purge this list? It's like if something bounces  
19 back, do you purge it or you just keep using it?

20 MR. CHAFIZADEH: We have the list. We haven't  
21 had any technological issues - - -

22 JUDGE RIVERA: Okay.

23 MR. CHAFIZADEH: - - - to date.

24 JUDGE RIVERA: Okay. That's fine.

25 And can people - - - maybe have already said

1 this. Can people actually - - - I mean, in an email you  
2 can usually correspond back and forth. Can they do that or  
3 is this only a one way?

4 MR. CHAFIZADEH: It's a one way - - - one-way  
5 ticket.

6 JUDGE RIVERA: So if I'm a subscriber and you  
7 send me a blast as you've sent everybody else on your  
8 subscriber list, and I want to say, wait a minute, I want  
9 to ask something about that. I would not use this email -  
10 - -

11 MR. CHAFIZADEH: You - - -

12 JUDGE RIVERA: - - - to do that?

13 MR. CHAFIZADEH: - - - you - - -

14 JUDGE RIVERA: I would not be able to like,  
15 reply, and ask a response?

16 MR. CHAFIZADEH: There's no response. Right.

17 JUDGE RIVERA: I see.

18 MR. CHAFIZADEH: There's no response. You could  
19 email the town supervisor, the town supervisor's assistant  
20 - - -

21 JUDGE RIVERA: That are otherwise available - - -

22 MR. CHAFIZADEH: You may - - -

23 JUDGE RIVERA: - - - publicly, right?

24 MR. CHAFIZADEH: Yeah.

25 JUDGE RIVERA: Right, right.

1 MR. CHAFIZADEH: Yeah. That would be publicly  
2 available email.

3 JUDGE RIVERA: But I couldn't use that email?  
4 It's not a sort of a correspondence - - -

5 MR. CHAFIZADEH: Correct.

6 JUDGE RIVERA: - - - back and forth?

7 JUDGE TROUTMAN: Can you unsubscribe?

8 JUDGE GARCIA: I'd like to - - -

9 MR. CHAFIZADEH: I'm sorry, Your Honor?

10 JUDGE TROUTMAN: Can you unsubscribe?

11 MR. CHAFIZADEH: You can.

12 JUDGE GARCIA: Counsel, could we go back to my  
13 original question - - -

14 MR. CHAFIZADEH: Sure.

15 JUDGE GARCIA: - - - and maybe this is wrong  
16 about sharing them. But in the respondent's brief, it says  
17 the original - - - page 6 and 7. It says the original  
18 information when you signed up, said that this information  
19 could be shared. The town will not - - - does not rent - -  
20 - sell or rent information about its users, but it may  
21 share or exchange information in accordance with the  
22 abovementioned laws. On the new website, apparently, this  
23 has changed and the list may have been imported, but it  
24 says we may share information with our agents, vendors,  
25 service providers, and subcontractors who perform functions

1 on our behalf.

2 MR. CHAFIZADEH: That would, I believe, be  
3 someone who has, like, their tech people who would help.

4 JUDGE GARCIA: It says - - -

5 MR. CHAFIZADEH: Are you on page 6 and 7?

6 JUDGE GARCIA: - - - such as customer  
7 relationship management, service provider, marketing  
8 automation and analytics provider, sales development tools  
9 provider, and other similar service providers. Now, I  
10 think that's the new one, but it looks like the existing  
11 email address may have been imported into that. But the  
12 old one did, apparently, according to this representation,  
13 the town does not sell or rent information, but it may  
14 share or exchange information in accordance with the  
15 abovementioned laws.

16 MR. CHAFIZADEH: Yeah. The town had a new system  
17 put in in '23, Your Honor.

18 JUDGE GARCIA: Yeah.

19 MR. CHAFIZADEH: And that's why it changed. And  
20 then petitioner emailed the town attorney and posted to  
21 Facebook. The town confirmed via Facebook post that this  
22 would be done. The privacy statement associated with the  
23 new website is similar to the old one. We may share your  
24 personal or other information about you with other parties  
25 to transactions when you use the solution.

1 JUDGE GARCIA: That seems to indicate to a user  
2 that their email can go other places besides the town.

3 MR. CHAFIZADEH: It would be people that work for  
4 the town or are using or assisting the town. Like, our - -  
5 - our outside IT specialist is a subcontractor. It's not  
6 someone internal. And he - - - it's - - - it was called  
7 Sullivan, now it's called Logically. They do have access  
8 to the emails. They would have to. But it's not something  
9 that's shared with - - - you know, if someone's doing a  
10 road reconstruction project in the town, we're not sharing  
11 the email addresses with the - - - with the contractors.

12 I just want to get back, Judge Halligan, to your  
13 question about the impact on people wanting to give their  
14 email addresses and get information about the town, because  
15 FOIL has the - - - oh, my time's expired.

16 Thank you.

17 CHIEF JUDGE WILSON: You can finish your thought.

18 MR. CHAFIZADEH: I just wanted to say that I  
19 think people would be chilled about not wanting to give  
20 their email addresses if - - - if their email addresses are  
21 out to someone or anyone in the public.

22 Thank you.

23 CHIEF JUDGE WILSON: Thank you.

24 MR. RUSSELL: Good afternoon, Your Honors. May  
25 it please the court. James Russell appearing pro se.

1           On October 16th, this Honorable Court unanimously  
2 upheld an even-year election law that shifts local  
3 elections to even-numbered years, aligning them with  
4 federal elections in order to increase voter participation  
5 in local elections.

6           Commenting on this decision, Chris Koetzle, the  
7 executive director of the New York Association of Towns,  
8 said we have folks across the state who may not necessarily  
9 be engaged in local elections to the level they should be.  
10 One way to increase local civic engagement is to preserve  
11 the ability of concerned residents to communicate by email  
12 with their neighbors, who have already voluntarily  
13 disclosed their email addresses to their local governments,  
14 by requesting notification by mail of local news and  
15 information.

16           The Second Judicial Department's decision ten  
17 years ago in *Lifson v. the Town of Greenburgh* enabled the  
18 disclosure of town email lists to, quote, "further the  
19 public discourse on matters of public importance and  
20 concern in the town", end of quote. Hence, fulfilling the  
21 legislative intent of the New York State Freedom of  
22 Information Law, which states - - -

23           JUDGE GARCIA: But Counsel - - -

24           MR. RUSSELL: Yes.

25           JUDGE GARCIA: - - - you don't think that that



1 might have a negative effect, right? If I give my email to  
2 the town and then I think everyone who has some issue with  
3 the town or some policy of the town is going to start  
4 emailing me. Do you think they should put a warning then -  
5 - -

6 MR. RUSSELL: Yeah. Well, I - - - I - - -

7 JUDGE GARCIA: - - - on it saying your emails are  
8 subject to FOIL - - -

9 MR. RUSSELL: Yes.

10 JUDGE GARCIA: - - - and anyone who wants to  
11 contact you on any issue is going to have your email  
12 address?

13 MR. RUSSELL: I do believe - - -

14 JUDGE GARCIA: And do you think that might not  
15 actually - - -

16 MR. RUSSELL: Well, I do believe that there - - -

17 JUDGE GARCIA: - - - facilitate that?

18 MR. RUSSELL: - - - should be a notice, but I - -  
19 - I think there should be a notice. And I suggested that  
20 in my - - - on my appellate briefs. I was surprised that,  
21 you know, since we're the neighboring town to Greenburgh  
22 with the Lifson's - - - where the Lifson decision was  
23 issued ten years ago, that neighboring towns might have put  
24 a notice that's saying, you know, on - - - on your  
25 information may be shared in accordance with the Freedom of



1 Information Law.

2 CHIEF JUDGE WILSON: It seems to me, though, that  
3 the consequence of what you just said is that towns should  
4 forcibly collect people's email addresses and post them for  
5 everybody to use, because that would facilitate discourse.

6 MR. RUSSELL: Well - - -

7 Why does it matter that it's voluntary?

8 MR. RUSSELL: Well, it is that people are - - -

9 CHIEF JUDGE WILSON: Why would that matter?

10 MR. RUSSELL: - - - voluntarily disclosing - - -

11 CHIEF JUDGE WILSON: No, I understand. But why  
12 does the voluntariness matter to the civic engagement point  
13 you made?

14 If the idea is to facilitate discussion among  
15 residents or people generally, why not just collect  
16 everybody's email by law and distribute it to people? That  
17 would be the maximum facilitation of discourse.

18 MR. RUSSELL: Right. If the town was to do  
19 something like that, is - - - is that what you're  
20 suggesting, Your Honor?

21 CHIEF JUDGE WILSON: Well, why would - - - why  
22 wouldn't that be what you're advocating, really?

23 MR. RUSSELL: Well, what I'm - - - what I'm  
24 advocating is that those persons who have exhibited civic  
25 interest - - -

1 CHIEF JUDGE WILSON: But why does that - - - why  
2 does that matter to your civic engagement argument? That  
3 it's voluntary?

4 MR. RUSSELL: Well, the the fact that they've  
5 voluntarily disclosed the information reduces the privacy  
6 aspect of the situation. By voluntarily disclosing an  
7 email address - - -

8 CHIEF JUDGE WILSON: So you do think there is  
9 some privacy aspect to this?

10 MR. RUSSELL: Yes. And one is disjoined from the  
11 cybersecurity aspect that was discussed, because I think  
12 it's important that within - - - within FOIL there is a  
13 separate entry for under 87.2(i), which speaks about  
14 information systems and information technology for  
15 businesses. And there - - - there is 87.2(b) relates  
16 specifically to privacy in the sense of New York Times v.  
17 the New York City Fire Department with - - - as far as the  
18 emotional and psychological effects - - -

19 JUDGE CANNATARO: Mr. Russell, in this case,  
20 there's a record that there are a number of people who  
21 affirmatively have indicated, when asked, that they don't  
22 want to hear from you. They don't want your communication.  
23 And I'm wondering how that doesn't directly implicate their  
24 privacy concern to the extent that when they gave their  
25 email to the town, they may have been under a reasonable

1 belief that the town was then not either going to  
2 voluntarily or even be compelled to give it to people who  
3 were going to communicate with them about matters that they  
4 didn't want to hear about.

5 MR. RUSSELL: Well, this situation began when our  
6 master plan was being revised, and there was very little  
7 communication within the town about what was going on.  
8 Agendas weren't even being posted in - - - in a timely  
9 fashion. So there is an - - -

10 JUDGE CANNATARO: I understand that these issues  
11 are important to you, and I certainly understand that you  
12 would like to get other people to consider those issues.  
13 But they surely must have a right to say I don't want to  
14 hear what you have to say?

15 MR. RUSSELL: Well, the - - - the so-called  
16 survey that's referenced in the briefs is really a very  
17 unprofessional document that was - - - it sent out with a -  
18 - - a notice from the supervisor showing dire consequences  
19 that you have your emails, and your privacy and your  
20 finances are in danger. So - - -

21 JUDGE RIVERA: So let's say - - - I'm over here.  
22 Let's say we disagree and we agree with the town, do you  
23 have some other mechanism by which you can share your  
24 position with members of the community?

25 MR. RUSSELL: Not as effectively as by email,

1 which is really - - -

2 JUDGE RIVERA: Well - - -

3 MR. RUSSELL: - - - the default standard of  
4 communication. And if the town has that ability and is  
5 being funded through taxpayers and is able to use that, I  
6 think that people - - -

7 JUDGE TROUTMAN: What about Facebook?

8 MR. RUSSELL: I - - - I've tried Facebook, and  
9 it's unfortunate. But the way it's constructed, it's not  
10 good for timely communications. For example, just last  
11 month, on December 10th, an announcement came out saying  
12 this - - - at 11 o'clock in the morning that this evening  
13 at 7:30, there's going to be a special meeting. And there  
14 were some posts on Facebook that people said, well, what -  
15 - - what's this all about?

16 JUDGE SINGAS: Well, do you think that that's a  
17 proper use for FOIL? That - - - you know, FOIL is used  
18 presumably to enhance transparency so that citizens can  
19 know what their governments are doing. But it seems like  
20 you want to use those - - - you want to use FOIL to obtain  
21 these addresses, to communicate with citizens about things  
22 that you find interesting and want to engage them on.

23 And I don't see how that fulfills the animating  
24 principle of FOIL, which is to enhance government's  
25 transparency.

1 MR. RUSSELL: Well, I think FOIL was designed  
2 with lists of names and addresses being used because you  
3 know 89.2(iii) - - - 2(b)(iii) relates to rules for lists  
4 of names and addresses to be used unless they're used for  
5 solicitation or fundraising purposes. So the basic way of  
6 communicating. And it's quite likely that if a different  
7 survey was done asking people, you know, would you like to  
8 maintain or have the ability to communicate with your  
9 neighbors about various issues, I think - - -

10 JUDGE HALLIGAN: If you - - -

11 MR. RUSSELL: - - - the response would be quite  
12 different.

13 JUDGE HALLIGAN: - - - if you wanted instead to  
14 secure these email addresses to communicate about your  
15 favorite sports team, do you think that the answer would be  
16 the same? That the analysis under FOIL would come out the  
17 same way?

18 MR. RUSSELL: No. Because I think the driving  
19 force behind FOIL is transparency in government and  
20 communicating.

21 JUDGE HALLIGAN: So in your view, your access to  
22 the information turns on what you would do with it; is that  
23 - - - is that right?

24 MR. RUSSELL: Well, the - - -

25 JUDGE HALLIGAN: I mean, what - - - what I take

1 you to be saying is if you wanted the addresses for a  
2 different purpose that was not related to what your local  
3 government was doing, but instead was about a - - - a local  
4 sports team or perhaps you wanted to get the addresses so  
5 that you could sell them to a data broker. In your view,  
6 does your access turn on what you particularly plan to do  
7 with the addresses?

8 MR. RUSSELL: Well, in my view, I think there's a  
9 hierarchy of purpose. But from, I guess, the court's  
10 perspective in Reclaim the Records it would seem that the -  
11 - -

12 JUDGE CANNATARO: Is FOIL concerned with the  
13 hierarchy of purposes? I mean, to me, as I was saying to  
14 your adversary, it's simply whether or not there's a  
15 privacy consideration at play.

16 MR. RUSSELL: Right.

17 JUDGE CANNATARO: Not about how important is the  
18 speech.

19 MR. RUSSELL: No. I'm - - - I agree - - -

20 JUDGE CANNATARO: Would you agree with that?

21 JUDGE HALLIGAN: So - - -

22 MR. RUSSELL: Yeah.

23 JUDGE HALLIGAN: - - - so if that's right, then  
24 it seems to me that if you could get the addresses for the  
25 purpose you want them for, someone else could get the

1 addresses for the purpose of selling them to a data broker?  
2 That, in other words, FOIL is agnostic as to the purpose.  
3 The question is, is there some exemption that shields the  
4 information from disclosure?

5 So if we are going to go down that path, that  
6 seems to me that we would also have to be willing to say  
7 that when the data brokers submit a FOIL request, they get  
8 the addresses as well. So am I wrong about that?

9 MR. RUSSELL: Well, I think that goes to the, I  
10 guess, rather long discussion in the history of this  
11 section about solicitation commercial purposes.

12 JUDGE HALLIGAN: Okay. Fair enough. Set the  
13 data - - - that - - - good point. Set the data brokers  
14 aside. But I take it that means that no matter how  
15 unwelcome a communication might be, that anyone who wants  
16 it is entitled to the list of email addresses?

17 MR. RUSSELL: Yes. And - - - and as Judge  
18 Warhit, at the oral argument that I had at the Second  
19 Appellate Division said that he considered a de minimis  
20 interference or inconvenience if a person does receive an  
21 email from a place that they are not - - -

22 JUDGE CANNATARO: I take it you agree with that  
23 statement by - - -

24 MR. RUSSELL: I do.

25 JUDGE CANNATARO: - - - Justice Warhit? Why?

1           What - - - what - - -

2                       MR. RUSSELL: Because the - - - the interference  
3           - - - the inconvenience is basically clicking on either to  
4           delete a message or to - - -

5                       JUDGE RIVERA: But then undermines - - -

6                       MR. RUSSELL: - - - unsubscribe.

7                       JUDGE RIVERA: - - - that undermines your whole  
8           position. Because what communication - - - what public  
9           engagement is going to occur if people are just going to  
10          press delete?

11                      MR. RUSSELL: Well, I don't think that everyone  
12          would do that if - - - if they're - - - if it's news about  
13          their town and - - -

14                      JUDGE RIVERA: Well, maybe not on the first  
15          email. Maybe they'll say, oh, well, what is this email  
16          about? And they'll say, oh, I see. Delete. And keep  
17          doing that in the future.

18                      MR. RUSSELL: Well, if they don't unsubscribe,  
19          then you - - -

20                      JUDGE RIVERA: And you have, as you've already  
21          admitted, other ways of communicating - - -

22                      MR. RUSSELL: Well, Facebook is very - - -

23                      JUDGE RIVERA: - - - with your - - - with your  
24          community members.

25                      MR. RUSSELL: The most effective means of



1 communication is email. If there's a meeting and a - - - a  
2 notice goes out special meeting at 7:30 tonight - - - we  
3 tried it on Facebook just in December. Maybe about ten  
4 people got it, and some other people saw what happened.

5 CHIEF JUDGE WILSON: Well, do you think a text  
6 message might be even more effective? Comes quicker right  
7 through cellular, than with an email?

8 MR. RUSSELL: Yes. But that would involve phone  
9 numbers, which I think are - - - would be a little - - -

10 JUDGE RIVERA: Why couldn't you get that if you  
11 can get someone's email?

12 JUDGE CANNATARO: Yeah. What's the difference?

13 MR. RUSSELL: Oh, because a - - - the phone  
14 number you can interrupt a person directly. More directly  
15 than with a - - - an email.

16 JUDGE RIVERA: Well, if I get a notice of an  
17 email, either I open it or I don't. It's like I see a  
18 phone number, either I choose to answer the call or I  
19 don't.

20 CHIEF JUDGE WILSON: Let me go back to, I think  
21 it was Judge Troutman's question. Suppose you get these  
22 addresses, what, if anything, can the town do if you sell  
23 them to a broker?

24 MR. RUSSELL: Well, there'll be the agreement  
25 that I offered when I made my first request is - - - is not

1 to share them with anyone who would be involved in  
2 soliciting.

3 CHIEF JUDGE WILSON: You mean by an agreement,  
4 you mean a written agreement?

5 MR. RUSSELL: Yes.

6 CHIEF JUDGE WILSON: You would sign a written  
7 agreement?

8 MR. RUSSELL: It's a certification as - - - you  
9 know, in - - - in - - -

10 CHIEF JUDGE WILSON: So does - - -

11 MR. RUSSELL: - - - 87 - - -

12 CHIEF JUDGE WILSON: - - - FOIL allow them to  
13 impose that kind of restriction on you?

14 MR. RUSSELL: It does. It does. Just in that  
15 one regard.

16 JUDGE CANNATARO: What - - - and what happens if  
17 you change your mind? Two months later you're like, you  
18 know what? This is a valuable list. People want to know,  
19 so I'm going to sell it. What happens?

20 MR. RUSSELL: Well, I would be subject to  
21 prosecution of breaking the agreement that I signed.

22 JUDGE RIVERA: Well, if you win, they're not  
23 going to pay you. They're just going to ask for it  
24 themselves. Why would they pay you? They can get it for  
25 free, if we agree with you - - -

1 MR. RUSSELL: And they would be subject to the  
2 same - - -

3 JUDGE RIVERA: - - - and not the town?

4 MR. RUSSELL: - - - they - - - they would be  
5 subject to signing the same certification as I would.

6 JUDGE RIVERA: Yeah. But then they can go  
7 directly against them, not the third-party. Right? Not  
8 against you because you gave it to someone else and they  
9 used it in a way that violated the - - - your agreement.

10 MR. RUSSELL: Most email addresses are - - - are  
11 already out there. People have - - - who have Googled  
12 their email addresses are surprised to see how widespread  
13 they are.

14 CHIEF JUDGE WILSON: Well, that sort of  
15 undermines your argument too, because you could Google and  
16 find them yourself?

17 MR. RUSSELL: That'd be rather lengthy process to  
18 do. But I think that this is particularly valuable as - -  
19 - as we are moving towards local elections, millions more  
20 people will be coming to the polls who are not civically  
21 engaged. This is an opportunity to help.

22 JUDGE GARCIA: But you think those people will  
23 give their emails to the town if they're not civically  
24 engaged?

25 MR. RUSSELL: Well, they might have given because

1 they're interested in the recreation schedules or what have  
2 you, and are not directly - - -

3 JUDGE GARCIA: I want to just go back to the  
4 purpose issue. The way I understand it is a little bit  
5 different. I thought when we get to this balancing of  
6 unwarranted invasion of privacy, the rule is that you  
7 determine whether it's unwarranted by balancing the privacy  
8 interests at stake against the public interest in  
9 disclosure. Right?

10 MR. RUSSELL: Yes.

11 JUDGE GARCIA: So what you could use this for the  
12 public generally, I guess, is what we're balancing against  
13 the potential invasion of privacy here, right?

14 MR. RUSSELL: Yes.

15 JUDGE GARCIA: So I guess to reformulate the  
16 earlier question generally, what is the public interest?  
17 Not your public interest, but generally, what would the  
18 public interest be in disclosing all these email addresses?

19 MR. RUSSELL: Greater awareness of - - -

20 JUDGE GARCIA: But it's just a general interest,  
21 right? Your interest may be that, but I think, as you've  
22 heard, some of my colleagues express the concern once these  
23 are FOIL-able they're FOIL-able not just to you, but to  
24 anyone. So what is the general public interest in having  
25 these emails released?

1 MR. RUSSELL: To improve the communication of  
2 people in the town. And the town does not provide any - -  
3 -

4 JUDGE RIVERA: I'm sorry. To improve what? I -  
5 - - I missed that. To improve - - -

6 MR. RUSSELL: Communication - - -

7 JUDGE RIVERA: Okay.

8 MR. RUSSELL: - - - among the people in the town.  
9 And no proof of any instance of any action deleterious to  
10 the persons who have submitted their email address, either  
11 in Mount Pleasant or any place in the state, has been shown  
12 to have caused any problem.

13 And according to FOIL, there should be specific  
14 and particularized descriptions of instances that may have  
15 occurred that might not be in the interest of the public  
16 interest, but that has never been done.

17 CHIEF JUDGE WILSON: Thank you, Counsel.

18 MR. RUSSELL: You're welcome.

19 MR. CHAFIZADEH: Your Honors, unless - - -

20 JUDGE HALLIGAN: Can I I ask you - - -

21 MR. CHAFIZADEH: Yeah.

22 JUDGE HALLIGAN: - - - just before you start, to  
23 address the argument that the personal privacy exemption  
24 isn't properly before us because it wasn't expressly  
25 invoked by the supervisor? And I don't think there was

1 specifically a decision by the supervisor either.

2 MR. CHAFIZADEH: Sure. There's a couple  
3 instances where I think the supervisor did make the  
4 decision, where he said on - - -

5 JUDGE HALLIGAN: I thought he said he would - - -  
6 he would look into it and seek a legal opinion. Is there  
7 anything after that?

8 MR. CHAFIZADEH: Right. But he did say, I'm  
9 uncomfortable sharing any type of this information without  
10 having consent of those that signed up.

11 JUDGE HALLIGAN: But there's nothing after the  
12 statement that he would seek a legal opinion; is that  
13 right?

14 MR. CHAFIZADEH: There's nothing after that, Your  
15 Honor.

16 JUDGE HALLIGAN: Okay. So why is that a  
17 decision? Because it sounds to me like it's basically  
18 saying, we'll get back to you with a decision.

19 MR. CHAFIZADEH: Quite frankly, I think it was in  
20 December of '21 when that email came out from the  
21 supervisor. Then Mr. Russell went to the Committee of Open  
22 Government, who recognized in February 10th of 2022, that  
23 we had valid concerns concerning the privacy issue, i.e.,  
24 the section we're talking about, the balancing test that's  
25 on record, page 67.

1           We never did get back to Mr. Russell after that,  
2           and he sued claiming constructive denial.

3           JUDGE HALLIGAN: Right. So why can you rely on  
4           it now if it wasn't part of the administrative record in  
5           that way?

6           MR. CHAFIZADEH: I think it was, Your Honor. Our  
7           position is that it was on page - - - when Supervisor  
8           Fulgenzi says that he's uncomfortable because of the  
9           privacy issue not having to sign up. And then the  
10          Committee on Open Government also indicates the privacy is  
11          an issue. And also Mr. Russell's all emails refer to that  
12          same issue. I think that's in the record. We would - - -  
13          we submit it's in the record fully that the denial is that  
14          brings up this balance and test.

15          JUDGE RIVERA: And didn't he refer to the prior  
16          decision?

17          MR. CHAFIZADEH: The Lifson decision? Yes.

18          JUDGE RIVERA: Yes.

19          MR. CHAFIZADEH: Yes. He - - -

20          JUDGE RIVERA: And isn't that decision based on  
21          the privacy exception?

22          MR. CHAFIZADEH: On the privacy except - - -  
23          exactly, Your Honor. Yes.

24          Thank you, Your Honors. Thank you. Appreciate  
25          it.

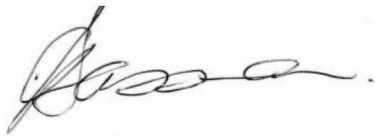
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C E R T I F I C A T I O N

I, Chrishanda Sassman-Reynolds, certify that the foregoing transcript of proceedings in the Court of Appeals of Russell v. Town of Mount Pleasant, No. 6 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: \_\_\_\_\_

Agency Name: eScribers

Address of Agency: 7227 North 16th Street  
Suite 207  
Phoenix, AZ 85020

Date: January 14, 2026

