

PREPARED BY THE COURT

JONATHAN HAGEL,
MICHELE DOWNIE, and
CATHERINE READ,

Plaintiffs,

v.

NEW JERSEY STATE POLICE,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MERCER COUNTY
DOCKET NO. L-890-25

CIVIL ACTION

**ORDER DISMISSING PLAINTIFFS’
COMPLAINT WITH PREJUDICE**

THIS MATTER having come before the Court, the Hon. Robert Lougy, A.J.S.C., presiding, on the Verified Complaint and Order to Show Cause filed by Plaintiffs Jonathan Hagel, Michele Downie, and Catherine Read, represented by Kurt W. Perhach, Esq.; and Defendant New Jersey State Police (NJSP), represented by Deputy Attorney General Daniel W. Knox, having filed opposition; and Plaintiffs having filed a reply and updated reply; and the Court having considered the parties’ pleadings and arguments; and for the reasons as stated below; and for good cause shown;

IT IS on this 7th day of July 2025 **ORDERED** that:

1. Plaintiffs’ application for an order compelling the immediate ability to conduct a complete forensic analysis to include DNA testing on the envelopes and stamps described in the Verified Complaint, pursuant to both the Open Public Records Act and the common law right of access to public records in accordance with Executive Order 110 (“EO 110”), is **DENIED**.
2. Plaintiffs’ application for the issuance of a penalty under N.J.S.A. 47:1A-11 is **DENIED**.
3. Plaintiffs’ application for reasonable attorney’s fees is **DENIED**.
4. Plaintiffs’ Verified Complaint is **DISMISSED with prejudice**.
5. This Order shall be deemed filed and served upon uploading on eCourts.

/s/ Robert Lougy _____
 ROBERT LOUGY, A.J.S.C.

 X **OPPOSED**
 _____ **UNOPPOSED**

PURSUANT TO RULES 1:6-2(f) AND 1:7-4(a), THE COURT PROVIDES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This matter comes before the Court on Plaintiffs’ order to show cause and verified complaint. Defendants oppose Plaintiffs’ application. Because Plaintiffs

have no legal right under either OPRA or the common law right to access (CLRA) to engage in such activity, the Court denies Plaintiffs' request and dismisses their complaint.

The Court provides the following factual and procedural histories. Jonathan Hagel is an Assistant Teaching Professor at the University of Kansas. Michele Downie is a Hopewell Borough, New Jersey resident. Catherine Read is a developmental psychologist. All three are interested in the Lindbergh kidnapping and believe that obtaining the DNA profile from the envelopes and stamps housed in the NJSP Museum will serve the public's interest.

The NJSP Museum houses documents and historical items relating to the kidnapping of Charles A. Lindbergh, Jr. Plaintiffs seek to examine and inspect several documents related to the Lindbergh kidnapping: all thirteen ransom envelopes, ten stamps, and the letter Bruno Richard Hauptmann wrote to Annette Begg. Compl. at ¶ 19. Plaintiffs wish to conduct a forensic examination of the documents to obtain the DNA profile of the adhesive attached to the stamps and envelopes. *Id.* at ¶¶ 19; 25. Each Plaintiff submitted a separate OPRA request to Defendant seeking to examine the DNA profiles of the documents. *See* Exs. P-8 – P-12. Defendant denied all three requests as improper and overboard. *Ibid.* In two of the requests, Defendant additionally asserted that the requests were

invalid under OPRA, regardless. Plaintiffs then filed this instant Verified Complaint and Order to Show Cause in April 2025.

Plaintiffs argue the following in support of its application. They argue that Defendant improperly denied Plaintiffs' OPRA requests as no applicable OPRA exception applies. Compl. at ¶ 21. Furthermore, they argue that the denial amounts to a violation of EO 110. Id. at ¶ 22. They state that it is urgent the Court grant them access to the documents now as they are continuing to decay as time goes on. Id. at ¶ 36. Plaintiffs provide a list of members of the public interested in seeing the DNA tested on the envelopes, stamps, and letters in support of their argument that DNA testing would serve the public interest. Id. at ¶¶ 39-54. Plaintiffs concede that no case law supports their argument. Id. at ¶ 60. Regardless, Plaintiffs assert that modern technologies and techniques allow DNA sampling in in a minimally invasive, non-destructive manner. Id. at ¶ 62.

Defendant argues that Plaintiffs state no OPRA or CLRA violation. They ask the Court to dismiss Plaintiffs' complaint with prejudice because OPRA does not permit DNA testing or manipulation of government records. Db8. Defendant argues that OPRA's plain language does not contemplate releasing records to test or manipulate. Db11. It further argues that Plaintiffs' reading of the statute would permit the public to access original copies of all government records and subject them to testing and DNA analysis. Db12.

As for the CLRA, Defendant argues that the Complaint should be dismissed because the government's interest in preserving the integrity of historical items outweighs any interest in conducting DNA tests. Db13-15. Lastly, Defendant contends that Plaintiffs are not entitled to attorney's fees as it properly denied Plaintiffs' OPRA requests. Db17-18.

In support of its argument, Defendant submits the certification of Gregory Ferrara, the Archivist of the New Jersey State Police Museum & Learning Center. Certif. of Gregory Ferrara, at ¶ 1. Ferrara certifies that he maintains and preserves the Museum's historical items, including 225,000 records related to the 1932 Lindbergh kidnapping. *Id.* at ¶¶ 3-4. He states that he personally oversees preservation, protection, and access protocols in line with archival standards, such as storing materials in secured, climate-controlled spaces and using polyester sleeves and acid-free containers. *Id.* at ¶¶ 1, 3, 4, 8. Ferrara explains that researchers and visitors can view Lindbergh trial materials only under supervision and may not alter or expose them to chemicals. *Id.* at ¶ 6. He outlines recent updates to security protocols that now limit direct researcher access and designate a special viewing space for the files. *Id.* at ¶ 7. He emphasizes that the Museum's archival standards prohibit the proposed DNA swabbing and contact with foreign substances, as demanded by the plaintiffs, because these actions would violate established preservation practices. *Id.* at ¶¶ 5-9.

In reply, Plaintiffs argue that Defendant ignores the history of EO 110. Pls.’ Reply at 2. They assert that Governor Byrne issued EO 110 for three reasons: (1) transparency; (2) his belief that Bruno Richard Hauptmann did not act allow; and (3) intent to link the Lindbergh case to OPRA. Ibid. They speculate that, had DNA testing existed when Governor Byrne issued EO 110 in 1981, he would have permitted DNA testing. Id. at 3. Plaintiffs admittedly state that without EO 110, they have no claim to the requested DNA testing. Ibid. But because no governor has rescinded EO 110, Plaintiffs maintain that the EO provides the legal right to conduct DNA testing of the documents. Id. at 3; 8.

Plaintiffs reiterate the public support for testing the envelopes and stamps. Id. at 10. They state that every person who would like to examine and inspect the envelopes and stamps could do so after Plaintiffs’ experts conduct their swabs. Id. at 12. They reiterate that DNA testing was not available at the time Governor Bryne issued EO 110. Id. at 12-13. Plaintiffs additionally argue that they are entitled to reasonable attorney fees despite their pro bono representation because Defendants intentionally and willfully violated OPRA. Id. at 13.

Plaintiffs note that Defendant did not address the public interest associated with the case, refute any of Plaintiffs’ experts, or dispute the immediate sense of urgency raised by Plaintiffs. Id. at 14-16.

In an updated reply brief, Plaintiffs inform the Court that Defendant has reopened the NJSP museum after more than a year of closure. Pl.’s Second Reply at 1. They state that the public is now required to fill out and complete two forms to access the archives. Id. at 2. Plaintiffs argue that these forms violate EO 110 by distinguishing between a researcher and a member of the public. Id. at 2-3.

The Court now turns to the relevant law. N.J.S.A. 47:1A-1 provides that “government records shall be readily accessible for inspection, copying, or examination ... with certain exceptions, for the protection of the public interest ...”

A “[g]overnment record” includes:

any ... information stored or maintained electronically ... that has been made, maintained or kept on file in the course of ... official business by any officer ... of the State or of any political subdivision thereof ... or that has been received in the course of ... official business by any such officer

[N.J.S.A. 47:1A-1.1.]

“The custodian must ‘promptly comply with a request’ and, if ‘unable to comply . . . shall indicate the specific basis therefor on the request form and promptly return it to the requestor.’” N. Jersey Media Grp., Inc. v. Bergen Cnty. Prosecutor’s Off., 447 N.J. Super. 182, 195 (App. Div. 2016). “A public agency that denies access bears ‘the burden of proving that the denial of access is authorized by law.’” Ibid.; N.J.S.A. 47:1A-6. However, OPRA does not obligate a custodian to provide a requestor with a copy of a record that does not exist or an

obligation to create such a new record from information in its possession. See N.J.S.A. 47:1A-6; Burnett v. County of Gloucester, 415 N.J. Super. 506, 516 (App. Div. 2010).

In accordance with the wide-ranging mandate of OPRA to “further expansion of the public’s right of access,” the government bears the burden of proof to demonstrate that a request should be denied or withheld under the statute. Burnett v. Cty. of Gloucester, 415 N.J. Super. 506, 512 (App. Div. 2010). The government must show that the requested document does not meet the definition of “government record” or that the record is exempt from disclosure under an OPRA exception and authorized by law. Gannett N.J. Partners, LP v. Cty. of Middlesex, 379 N.J. Super. 205, 215 (App. Div. 2005) (citing N.J.S.A. 47:1A-6). Where ambiguous, the statute dictates that “any limitations on the right of access . . . shall be construed in favor of the public’s right of access.” N.J.S.A. 47:1A-1.

Individuals and entities may request the disclosure of public records under either OPRA or the common law. The common law right of access is more wide-ranging than OPRA as “the requestor is not limited to the categories of information subject to disclosure under OPRA.” Gannett Satellite Info. Network, LLC v. Twp. of Neptune, 254 N.J. 242 (2023). However, “the showing a requester must make to gain access is greater than that required under OPRA.” N. Jersey Media Grp.,

Inc. v. Bergen Cnty. Prosecutor's Office, 447 N.J. Super. 182, 210 (App. Div. 2016).

Additionally, “the right to inspect and copy governmental records under OPRA is without limitation as to the reasons for which the access is undertaken.” MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 545 (App. Div. 2005). Put more succinctly, “[a] party’s right to access public records is not abridged because it may be involved in other litigation with the governmental agency required to respond to the OPRA request.” Ibid.

Under the common law, to constitute a public record, three elements must be met: (1) the record is “one required by law to be kept, or necessary to be kept . . . or directed by law to serve as a memorial and evidence of something written”; (2) the document was “made by a public officer”; and (3) “the officer [was] authorized by law to make it.” Carter v. Doe (In re N.J. Firemen's Ass'n Obligation), 230 N.J. 258, 281 (2017) (quoting Nero v. Hyland, 76 N.J. 213, 222 (1978)). Public records that are accessible under the common law must meet three factors: (1) the records are common-law public documents; (2) the requestor has “an interest in the subject matter of the material;” and (3) the requestor’s right to access outweighs “the State’s interest in preventing disclosure.” Rivera v. Union Cnty. Prosecutor's Off., 250 N.J. 124, 144 (quoting N. Jersey Media Grp., Inc. v.

Township of Lyndhurst, 229 N.J. 541, 578 (2017)) (internal quotation marks omitted).

Part three of the analyses “include[s] a consideration of whether the demand for inspection is premised upon a purpose [that] tends to advance or further a wholesome public interest or a legitimate private interest.” Drinker Biddle & Reath LLP v. N.J. Dep’t of L. & Pub. Safety, Div. of Law, 421 N.J. Super. 489, 500 (App. Div. 2011) (quoting S. N.J. Newspapers, Inc. v. Twp. of Mt. Laurel, 141 N.J. 56, 72 (1995)). “Where ‘reasons for maintaining a high degree of confidentiality in the public records are present, even when the citizen asserts a public interest in the information, more than [the] citizen’s status and good faith are necessary to call for production of the documents.’” Ibid. (quoting S. N.J. Newspapers, Inc., 141 N.J. at 72).

Plaintiffs rely upon Governor Byrne’s EO 110, which ordered the Superintendent of NJSP “to make the investigative files, records and exhibits within his custody relating to the investigation of the Lindbergh kidnapping available to the public, and subject to inspection and examination and available for copying.” EO 110, § 1 (Byrne 1981). EO 110 grants NJSP the discretion to adopt practices to protect these historical items:

The Superintendent is empowered . . . to establish procedures to insure that there is no risk of damage or mutilation of such files, records and exhibits and to insure

that public access and right to copy such files, records and exhibits shall be during regular business hours to the extent that such access is compatible with the economic and efficient operation of his division and the transaction of its public business and to provide and assure payment of such costs as permitted by law.

[Id. at § 2 (emphasis added).]

Here, Plaintiffs' complaint fails to state a claim under OPRA or the common law. The physical examination, analysis, and extraction of property belonging to Defendant is not a records request. Plaintiffs provide no statute or case law in support of their OPRA request. The plain language of N.J.S.A. 47:1A-5(a) provides that records custodians permit a record to be "inspected, examined, and copied." OPRA does not contemplate DNA testing or other scientific manipulation of records. Expanding the definitions of inspection and examination, as Plaintiffs argue the Court should do, and interpreting OPRA in such a way to allow DNA testing would lead to absurd results as individuals could then subject any government record to testing and analysis.

Plaintiffs concede that no case law supports their argument. They rely solely on EO 110. While Plaintiffs argue that had DNA testing been available at the time EO 110 was issued then it would have been accepted as a means to obtain the DNA profile of the envelopes, stamps and letter, the Court finds this reasoning to be entirely speculative. While not underplaying the importance of EO 110 in

ensuring that the Lindbergh archive remains available to the public, Plaintiffs overstate its breadth. In legal terms, EO 110 exempted the Lindbergh archive from the criminal investigatory exemptions to the Right to Know Law (“RTKL”) created by Governor Hughes’ earlier executive orders, all within the bounds of, first, RTKL, and now, OPRA. In other words, EO 110 did not expand the public’s rights vis-à-vis the Lindbergh archive beyond those available to any other government records subject to disclosure.

To conjecture that EO 110 would have allowed DNA analysis of the Lindbergh papers would have the executive order afford the public greater rights regarding the archival treasures than any other government records. That contradicts the express terms of EO 110. Paragraph 1 limits the public’s access to “inspection and examination and available for copying.” Paragraph 2 constrains the Superintendent’s ability to provide “public access and right to copy such files, records and exhibits,” consistent with N.J.S.A. 47:1A-2, and in such a manner as to “insure that there is no risk of damage or mutilation of such files, records and exhibits.”

Additionally, obtaining the DNA profile of the envelopes and stamps would permanently alter the condition of the items. Defendant holds an interest in preserving the integrity of the historical items. This is an interest that far exceeds any asserted public interest by Plaintiffs. While Plaintiffs’ experts emphasize the

use of nondestructive methodology, even these methodologies may result in permanent alterations to the items as the experts state they have to open the envelope flaps and remove the stamps, which ultimately results in the manipulation of the items. Allowing the manipulation of the items in such a way would conflict with NJSP's directive to protect historical items from damage or mutilation, such that the public may continue to have access to such items in the future. See EO 110 (Byrne 1981). Depriving the public to access to these items in their original state would not serve the public interest.

The Court does not minimize the historical value of the Lindbergh archive or Plaintiff's interest in the records it contains. As Governor Byrne wrote forty-four years ago, "The Lindbergh case was and continues to be of extraordinary interest to the legal community and the public at large." EO 110. But nothing in OPRA, CLRA, or EO 110 grants this Court the authority to compel NJSP to allow the extra-statutory testing, manipulation, and alteration of archival records that Plaintiffs seek. Their claims based on those authorities fail.

Plaintiffs are free to explore other avenues. As Mr. Ferrara certifies, NJSP "allows individuals to submit proposals for research testing to the Superintendent's Office for review." Ferrara Certif., at ¶ 6. That may be a more fruitful, constructive opportunity to establish to the Superintendent's satisfaction that the

techniques and technologies that Plaintiffs seek to employ are consistent with generally accepted archival standards.

Because Defendant properly denied Plaintiffs' OPRA requests, Plaintiffs are not entitled to reasonable attorney's fees.

The Court dismisses Plaintiffs' complaint with prejudice.