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June 19, 2025

Via eCourts

The Honorable Robert T. Lougy, A.J.S.C.
Civil Courthouse
175 South Broad Street, 3rd Floor
Trenton, N.J. 08650

Re: Jonathan Hagel, et al. v. New Jersey State Police
Docket No. MER-L-890-25

Letter Brief in Opposition to Plaintiffs' Order to Show Cause

Dear Judge Lougy:

This office represents Defendant the Division of New Jersey State Police (NJSP) in the above-referenced matter. Please accept this letter brief in lieu of a more formal submission in opposition to Plaintiffs' Order to Show Cause and Verified Complaint.

PRELIMINARY STATEMENT

Plaintiffs seek to compel NJSP to permit DNA testing and analysis of historical artifacts relating to the kidnapping of Charles A. Lindbergh, Jr., under the Open Public Records Act (OPRA) and the common law right of access.



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Plaintiffs argue that the right to inspect, examine, and copy public records under OPRA and the common law incorporates an implicit right for the public to conduct DNA testing and related analysis on these historical artifacts. But Plaintiffs can cite no legal authority supporting this novel expansion of OPRA and the common law. That is because no such right exists. What's more, this court has already held that "OPRA is not the vehicle by which a citizen can march up to a museum and demand that the custodians of historical artifacts and documents surrender the State's treasures for analysis, alteration and destruction," in its well-reasoned opinion in Sudhakar v. NJSP, et al., MER-1706-22 (January 5, 2023). Accordingly, this Court should dismiss Plaintiffs' complaint with prejudice and deny their Order to Show Cause.

PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS¹

A. The New Jersey State Police Museum and Lindbergh Archive

The New Jersey Museum & Learning Center (Museum), located at the NJSP headquarters, is the repository of NJSP's historical records and artifacts. Certification of Gregory Ferrara (hereinafter "Ferrara Cert"), ¶1. As the custodian, NJSP preserves approximately 225,000 records related to the kidnapping of Charles A. Lindbergh, Jr. (Lindbergh Archive). Id. at ¶4. This

¹ The procedural history and counterstatement of facts are inextricably intertwined and are combined for the court's convenience.

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swath of historical records includes files, reports, trial evidence, photographs, and correspondence. Ibid.

The kidnapping of Charles A. Lindbergh, Jr. is one of the most widely publicized cases in NJSP's history. See New Jersey State Police, [The history of the New Jersey State Police from 1921 to present](#), [nj.gov/njsp/about/history/1930s.shtml] (last visited June 19, 2025).² This case garnered international and national attention while involving almost every member of NJSP, almost every national police agency, and foreign police agencies. Ibid.

In the years since, the Lindbergh case has continued to attract attention. In fact, in 1981, then-Governor Brendan Byrne recognized that the Lindbergh kidnapping case continued to have an “extraordinary interest to the legal community and public at large.” Executive Order 110 (Byrne 1981) (hereinafter “E.O. 110”). Against that backdrop and recognizing that the criminal investigatory records privilege under OPRA's predecessor the Right to Know Law, would otherwise bar disclosure of investigative records relating to that matter, Governor Byrne directed the Superintendent of NJSP to “make the investigative files, records and exhibits within his custody relating to the

² Web addresses throughout this letter brief have been modified by excluding the leading “www.” in order to disable all hyperlinks. Such omissions are represented by empty brackets (“[]”).

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investigation of the Lindbergh kidnapping available to the public, and subject to inspection and examination and available for copying. . .” Id. at Section 1.

However, such access is not absolute. Indeed, Governor Byrne recognized and highlighted that reasonable measures were necessary to ensure that the Lindbergh Archive was properly preserved and protected. Id. at Section 2. Accordingly, Governor Byrne empowered the NJSP Superintendent “to establish procedures to insure that there is no risk of damage or mutilation of such files, records and exhibits.” Ibid.

Consistent with Governor Byrne’s executive order, the public continues to access and view the Lindbergh Archive more than forty years later. On an annual basis, the Museum welcomes about 1,800 visitors who wish to tour and view NJSP’s historical items, including the Lindbergh Archive. Ferrara Cert. at ¶6. Additionally, the Museum communicates with researchers who request information on NJSP’s historical items. Ibid. Upon request and approval by NJSP, researchers may directly access Museum items, including the Lindbergh trial materials. Ibid. Starting on April 4, 2024, researchers’ access to the Lindbergh files was temporarily limited while NJSP updated its security protocols which included creating/designating a new space to view the Lindbergh trial evidence. Id. at ¶7. In addition to providing a new viewing area for the Lindbergh materials, the security protocol also limits researchers’ access

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to the archive area allowing NJSP to better protect and secure files that are not being viewed. See *ibid.* However, because this security protocol is now in place, researchers' access is no longer limited, and they are free to request an appointment to view the Lindbergh's trial evidence appropriately. *Ibid.*³

To ensure the historical items' protection, researchers granted direct access to the Museum items are subject to different safeguards depending on the nature of the item(s) being accessed. *Id.* at ¶6. For example, the Museum Archivist directly supervises all visits where a researcher is granted direct access to a historical item. *Ibid.* And under the relevant Museum policies, researchers are never permitted to alter the condition of a historical item nor expose the item to foreign chemicals or other substances. *Ibid.*

Relevant here, the Lindbergh archive materials are maintained consistent with generally accepted archival standards. *Id.* at ¶8. Meaning that the trial materials are contained in a temperature and humidity controlled, locked room which is always monitored and secured. *Ibid.* The Lindbergh Archive envelopes – and materials therein - are maintained in polyester sleeves to allow viewing while protecting the items from foreign substances like oils or acids. *Ibid.*

³ Separate and apart from the Open Public Records Act, N.J.S.A. 47:1A-1 to -13, NJSP allows individuals to submit proposals for research testing to the Superintendent's Office for review. Ferrara Cert. at ¶6. However, no such rejection of a request for DNA testing is at issue in this matter.

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Moreover, to further protect these items, the polyester sleeves and envelopes are contained within acid-free manuscript folders and those folders are maintained in “standard acid-free board archival boxes.” Ibid. These folders and boxes are designed to protect the items from foreign substances and “reduce the effects of migrant acidity and atmospheric pollutants,” respectively. Ibid. At bottom, these protections ensure that the Lindbergh materials are preserved and safe from alteration and destruction – consistent with Governor Byrne’s executive order. See id. at ¶¶6-9.

And because of these protections, researchers and the public alike continue to enjoy access to the Lindbergh Archive. As previously mentioned, there was a limited time where the Lindbergh archive materials could not be accessed for administrative reasons, but such obstacles no longer exist. Id. at ¶7. Put simply, the Lindbergh Archive remains open to the public and researchers.

B. OPRA Requests

In February and March 2025, Plaintiffs submitted OPRA requests to NJSP related to the March 1, 1932 kidnapping of Charles A. Lindbergh, Jr. (Compl., Ex. 8 at 3; Ex. 10 at 3; Ex.12 at 3). To summarize, Plaintiff Hagel sought to make “the evidence of [the Lindbergh] case available to further scrutiny” given that DNA testing of “the ransom letter” may provide clarity or confirm what is

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presently known about the kidnapping of Charles Lindbergh, Jr. (Compl., Ex. 8 at 3). Plaintiffs Downie and Read submitted similar requests. (Compl., Ex. 10 at 3; Ex. 12 at 3). Specifically, Downie requested that “the information contained on the back of the stamps and seals of the envelopes be forensically tested.” (Compl., Ex. 10 at 3). Downie requested that the Lindbergh items be exposed to this process because “DNA testing and the evidence it holds [is] relevant to solving some of history’s greatest stories.” Ibid. And while Read advised she would “like to know” who sent the envelopes to Charles Lindbergh and his intermediaries, significantly her request did not seek any records. Ibid. Rather, Read requested “non-destructive tests” be conducted by a “group of forensic experts” on “the stamps and envelopes” “to learn whose DNA information” may be on those historical items. (Compl., Ex. 12 at 3). Read proclaimed that such tests are necessary to “uncover” “who sent these envelopes” in order to “potentially correct a historical injustice.” Ibid. Stated differently, Read requested that the envelopes and stamps undergo DNA testing to determine the identity of the messenger(s).

In response, NJSP denied all three requests. To the extent that both Hagel and Read sought information, NJSP communicated that OPRA only permits requests for records – not information. (Compl., Ex. 8 at 3; Ex. 12 at 3). Moreover, to the extent that Downie and Read sought to conduct DNA tests on

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the historical items related to the Lindbergh kidnapping, citing to this court's prior holding in Sudhakar v. NJSP, et al., MER-L-1706-22 (Jan. 5, 2023), NJSP properly advised that OPRA does not contemplate DNA testing. (Compl., Ex. 10 at 3, Ex. 12 at 3).

C. Filing of Complaint

Thereafter, on April 25, 2025, Plaintiffs filed their Verified Complaint and Order to Show Cause claiming that NJSP violated OPRA and the common law right to access, demanding to conduct DNA testing on the backflaps of certain envelopes and stamps. (Compl. at ¶¶1, 57-64).

ARGUMENT

POINT I

THE COMPLAINT SHOULD BE DISMISSED WITH PREJUDICE BECAUSE OPRA IS A RECORDS LAW THAT DOES NOT CONTEMPLATE TESTING OR MANIPULATION OF RECORDS AS PART OF GOVERNMENT ACCESS.

This court should dismiss Plaintiffs' complaint with prejudice because OPRA does not permit DNA testing or the manipulation of records. Indeed, OPRA only permits requests for records – it is not a law to obtain information and analysis of historical items. Such actions would be contrary to OPRA's spirit which is designed for transparency into the government's operations.

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Therefore, this court should dismiss Plaintiffs' Complaint with prejudice and deny their Order to Show Cause.

OPRA is designed to “maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process.” Mason v. City of Hoboken, 196 N.J. 51, 64-65 (2008) (quoting Asbury Park Press v. Ocean Cnty. Prosecutor's Office, 374 N.J. Super. 312, 329 (Law Div. 2004)). Indeed, “[i]n enacting OPRA, the Legislature intended to bring greater transparency to the operations of government and public officials.” Paff v. Galloway Twp., 229 N.J. 340, 352 (2017).

To accomplish this purpose, OPRA provides that government records “shall be readily accessible for inspection, copying, or examination.” N.J.S.A. 47:1A-1; see N.J.S.A. 47:1A-1.1 (defining government records as “any paper, written or printed book, [or] document . . . maintained or kept on file . . . or that has been received in the course of his or its official business by any such officer, commission, agency, or authority of the State or of any political subdivision thereof.”) Which makes sense because OPRA “only allows requests for records, not requests for information.” Burke v. Brandes, 429 N.J. Super. 169, 174 (App. Div. 2012) (quoting Bent v. Twp. of Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005)).

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But, even if a proper record request is submitted, the public's access is still subject to "reasonable controls, and courts have inherent power to prevent abuse and protect the public officials involved." MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); cf. DeLia v. Kiernan, 119 N.J. Super. 581, 585 (App. Div. 1972) (finding that any inspection under the Right to Know Law is permissible only subject to reasonable controls as to time, place, or copying). And that makes sense because without reasonable controls, OPRA requests could lead to absurd results. See N. Jersey Media Grp., Inc. v. Bergen Cnty. Prosecutor's Office, 447 N.J. Super. 182, 199 (App. Div. 2016) (stating that "[w]hen a literal interpretation would create a manifestly absurd result, contrary to public policy, or would lead to results inconsistent with the overall purpose of the statute, such interpretations should be rejected in favor of the spirit of the law") (internal quotations and citation omitted).

Requests to conduct DNA testing are not requests for records within the purview of OPRA. Sudhakar v. NJSP, et. al, MER-L-1706-22 (January 5, 2023), aff'd, No. A-1764-22 (App. Div. Dec. 23, 2024) (affirming the trial court's decision on procedural grounds).⁴ In Sudhakar, the plaintiff challenged NJSP's

⁴ Consistent with Rule 1:36-3, a copy of the unpublished trial court opinion and Appellate Division opinion are attached to Daniel W. Knox's Certification as "Exhibit A" and "Exhibit B."

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refusal to allow DNA testing on envelopes, stamps, and wooded items related to the kidnapping of Charles A. Lindbergh, Jr., asserting DNA testing was permitted under OPRA and the common law right of access. Id. at 2, 8-9. In dismissing the plaintiff's complaint, this court found "OPRA is not the vehicle by which a citizen can march up to a museum and demand that the custodians of historical artifacts and documents surrender the State's treasures for analysis, alteration, and destruction." Id. at 14. Addressing the merits of the plaintiff's argument this court held that DNA testing – "the physical examination, analysis, extraction, and partial destruction" – is not a records request under OPRA, reasoning OPRA's plain language permitting inspection, examination, and copying does not "contemplat[e] testing or manipulation[.]" Id. at 14-15 (citing N.J.S.A. 47:1A-5(a)).

Here, like the requests at issue in Sudhakar, Plaintiffs' request to conduct DNA testing on the Lindbergh items is similarly improper. That's because, under OPRA, a requestor must seek access to a specific identifiable record – not request to subject the record to testing and analysis. Put plainly and as previously recognized by this court, OPRA does not contemplate DNA testing or manipulation as part of public access. Ibid. Instead, OPRA's plain language only provides that "[t]he custodian of a government record shall permit the record to be inspected, examined, and copied by any person during regular

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business hours.” N.J.S.A. 47:1A-5(a); see also Sudhakar, MER-L-1706-22 at 14-15. Thus, OPRA does not contemplate DNA testing or any other scientific manipulation to government records. In fact, DNA tests and analysis under OPRA would lead to absurd results as individuals could then request to subject any government record to testing and analysis. See Trautmann ex rel. Trautmann v. Christie, 418 N.J. Super. 559, 567 (App. Div. 2011) (stating that, when interpreting statutes, courts give “sense to the legislation as a whole . . . and avoid[] an absurd result.”) (internal quotations and citations omitted). This would be erroneous. What’s more, Plaintiffs concede that no case law exists supporting its position that DNA testing is authorized under OPRA. (Compl. at ¶60).

Plaintiffs’ attempt to resolve this logical gap by arguing that “inspection” and “examination” should encompass a “forensic DNA analysis” (Compl. at ¶58), represents a novel, unsupported, and enormous expansion of OPRA. Following Plaintiffs’ reasoning to its logical conclusion, OPRA would permit the public to access original copies of all government records and subject them to testing, and DNA analysis. Not only is that an absurd result, but is well beyond the plain language of OPRA. See DiProspero v. Penn, 183 N.J. 477, 492 (2005) (stating that courts look to Legislative intent when interpreting a statute and give statutory words their ordinary meaning). What’s more, such request is

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inconsistent with the spirit of OPRA, which is intended to foster transparency in government operations, not permit DNA testing of government papers. Paff, 229 N.J. at 352. Therefore, for these reasons, Plaintiffs' complaint regarding OPRA should be dismissed with prejudice.

POINT II

**PLAINTIFFS' COMPLAINT SHOULD BE
DISMISSED BECAUSE THE GOVERNMENT'S
INTEREST IN PRESERVING THE INTEGRITY
OF HISTORICAL ITEMS OUTWEIGHS ANY
INTEREST IN CONDUCTING DNA TESTS
UNDER THE COMMON LAW RIGHT OF
ACCESS.**

This court should dismiss the DNA test request on the Lindbergh stamps and envelopes because the proposed testing does not fall within the common law right of access. Moreover, even if the proposed testing did fall within the common law, the State holds a significant interest in preserving the historical items' integrity in its possession for the benefit of all current and future citizens. Such interest substantially outweighs Plaintiffs' interest. Therefore, this court should dismiss Plaintiffs' complaint to the extent it demands to conduct DNA tests on Lindbergh Archive items under the common law.

As a threshold matter, Plaintiffs fail to demonstrate that the common law right of access permits manipulation or testing public records. In fact, Plaintiffs

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concede that no case law interpreting the common law right of access so broadly exists. (Compl. at ¶60).

Historically, the common law to inspect public records developed in situations “where a party sought evidence for the prosecution or defense of [their] rights in pending litigation.” Ferry v. Williams, 41 N.J.L. 332, 334 (1897). Consistent with that history, now “[u]nder the common law rule of access to public documents, a citizen is entitled to inspect documents of a public nature . . . provided he shows the requisite interest therein.” Nero v. Hyland, 76 N.J. 213, 222 (1978) (quoting Ferry, 41 N.J.L. at 334).

To gain access to public records under the common law right of access, a requestor must show: (1) the records are common-law public documents; (2) the person seeking has an interest in the subject matter of the material; and (3) the citizen’s right to access outweighs the State’s interest in preventing disclosure. Keddie v. Rutgers, 148 N.J. 36, 50 (1997) (internal quotation marks and citations omitted). When balancing the right to access against the State’s interest in preventing the disclosure, courts consider:

(1) the extent to which disclosure will impede agency functions by discouraging citizens from providing information to the government; (2) the effect disclosure may have upon persons who have given such information, and whether they did so in reliance that their identities would not be disclosed; (3) the extent to which agency self-evaluation, program improvement, or other decision making will be chilled by disclosure;

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(4) the degree to which the information sought includes factual data as opposed to evaluative reports of policymakers; (5) whether any findings of public misconduct have been insufficiently corrected by remedial measures instituted by the investigative agency; and (6) whether any agency disciplinary or investigatory proceedings have arisen that may circumscribe the individual's asserted need for materials.

[Loigman v. Kimmelman, 102 N.J. 98, 113 (1986).]

When balancing these interests, courts also recognize a presumption “that the release of the government record is not in the public interest” when “the requested material appears on its face to encompass legislatively recognized confidentiality concerns.” Michelson v. Wyatt, 379 N.J. Super. 611, 621 (App. Div. 2005).

Here, the competing interests are clear. Plaintiffs wish to conduct DNA tests on the Lindbergh artifacts with the goal of potentially obtaining evidence of who interacted with those materials. (Compl. at ¶56). In turn, NJSP's interest – consistent with E.O. 110 – is to “insure that there is no risk of damage or mutilation of such files, records and exhibits” from the Lindbergh Archive to preserve these items for the benefit of the general public as they are mandated by Executive Order to do.

On balance, NJSP's substantial interest in preserving the integrity of historical items significantly outweighs Plaintiffs' “truth” quest for several

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reasons. For one, NJSP has a substantial interest in preserving historical items from being manipulated or altered. See Freedom From Religion Found. v. Morris Cnty. Bd. of Chosen Freeholders, 232 N.J. 543, 585 (2018) (Solomon, J., conc.) (“New Jersey's Constitution recognizes the preservation of historic structures as an important government purpose.”) (citing N.J. Const. art. VIII, § II, ¶ 7). Indeed, this paramount interest not only safeguards this State’s history, but it also is consistent with E.O. 110. That’s because the preservation of the Lindbergh Archive and denial from outside requests to conduct DNA tests ensures that no risk of damage or mutilation occurs. E.O. 110, Section 2. As a result, consistent with that executive order, the public continues to benefit from such access both now and in the future.

For another, allowing manipulation or alteration of public records is not aligned with the common law’s purpose of transparency. In fact, by permitting such testing by outside parties, the opposite would be accomplished because the public may be deprived of future access to the records. See Jess Romeo, Testing the DNA in Museum Artifacts Can Unlock New Natural History, but Is it Worth the Potential Damage?, SMITHSONIAN MAGAZINE, (March 13, 2019) [[smithsonianmag.com/sciencenature/testing-dna-museum-artifacts-unlock-natural-historyworth-potential-damage-180971697/](https://www.smithsonianmag.com/sciencenature/testing-dna-museum-artifacts-unlock-natural-historyworth-potential-damage-180971697/)] (discussing the need to

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balance the desire to test historical items with the newest advancement in technology against the damage that may be caused during testing).

At bottom, NJSP maintains a significant interest in preserving the integrity of historical items within its possession. Such interest is aligned with the public's interest in ensuring that historical materials remain available for future generations' benefit. Plaintiffs' generalized interest in transparency does not tip the scale towards DNA testing because to allow such process could jeopardize access to our State's history.

POINT III

PLAINTIFFS ARE NOT ENTITLED TO ATTORNEY FEES.

Because NJSP properly denied the OPRA requests, they are not entitled to counsel fees.

Under OPRA, “[a] requestor who prevails in any proceeding may be entitled to a reasonable attorney’s fee.” N.J.S.A. 47:1A-6. Requestors are only entitled to attorney fees if the public agency has “unreasonably denied access, acted in bad faith, or knowingly and willfully violated” OPRA. Ibid. Absent a judgment or enforceable consent decree, requestors can argue that they should receive attorney’s fees if they can demonstrate: “(1) ‘a factual causal nexus between plaintiff’s litigation and the relief ultimately achieved’; and (2) ‘that the relief ultimately secured by plaintiffs had a basis in law.’” Mason, 196 N.J.

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at 51 (quoting Singer v. State, 95 N.J. 487, 494 (1984)).” However, there is no right to an award of attorney’s fees to a party who successfully pursues a claim under the common law right of access to public records. Gannett Satellite Info. Network, LLC, v. Twp. of Neptune, 254 N.J. 242, 264-65 (2023).

Here, NJSP’s denial of Plaintiffs’ OPRA requests was proper. Moreover, Plaintiffs’ claims are likewise not appropriate under the common law right of access. Therefore, Plaintiffs are not entitled to attorney’s fees under OPRA and such fees are not available under the common law. Accordingly, Plaintiffs’ complaint should be denied and dismissed without the award of attorney’s fees.

CONCLUSION

For these reasons, this Court should dismiss Plaintiffs’ verified Complaint with prejudice and deny their Order to Show Cause.

Respectfully submitted,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: /s/ Daniel W. Knox
Daniel W. Knox
Vivek N. Mehta
Deputy Attorneys General
Attorney ID: 339762021

DATED: June 19, 2025

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

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 of New Jersey State Police*

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<hr/>		:	SUPERIOR COURT OF NEW
JONATHAN HAGEL,	:	JERSEY	
MICHELE DOWNIE,	:	LAW DIVISION - MERCER	
CATHERINE READ,	:	COUNTY	
	:		
Plaintiffs,	:	DOCKET NO.: MER-L-890-25	
v.	:		
	:	<u>CIVIL ACTION</u>	
DIVISION OF NEW JERSEY	:		
STATE POLICE,	:	CERTIFICATION OF	
	:	GREGORY FERRARA	
Defendant.	:		
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I, Gregory Ferrara, of full age, hereby certifies and says:

1. I am the Archivist of New Jersey State Police (NJSP) Museum & Learning Center (Museum) located at 1040 River Road, West Trenton, NJ 08628. The Museum is located at NJSP headquarters.

2. I make this certification in support of Defendant's opposition to Plaintiffs' Order to Show Cause. I have personal knowledge of the facts stated herein.

3. As the Archivist, I am responsible for overseeing the preservation and maintenance of the Museum's historical items. These responsibilities include periodically evaluating the condition of historical materials. Additionally, to maintain the items' integrity, I perform minor preservation techniques on the Museum's documents, photographs, artifacts, and any other materials when appropriate. These techniques include encapsulation, refolding, preservation copying, and document/paper cleaning.

4. The Museum is the repository of historical records related to NJSP's history, mission, and functions. The Museum maintains about 225,000 records related to the Charles Lindbergh, Jr. Kidnapping from 1932 (Lindbergh Kidnapping) which includes numerous investigation files, reports, trial evidence, photographs, and correspondence (collectively, the "Lindbergh Archive").

5. By virtue of my position, I am familiar with the Museum's preservation practices involving its historical materials. Also, I am familiar with Plaintiffs' requests to conduct DNA testing on the historical trial materials from the Lindbergh Archive. Specifically, they seek to conduct such tests on the backflaps of thirteen ransom envelopes and underneath several stamps on those envelopes, and on the envelopes and stamps of the two letters that the individual convicted of the kidnapping – Bruno Richard Hauptmann – wrote. I am also familiar with Plaintiffs' complaint demanding the same, and NJSP's denial of such requests and its justifications.

6. On average, the Museum welcomes around 1,800 visitors each year who come to tour the facility to see different exhibits and displays, including the displays of items from the Lindbergh Archive. Moreover, the Museum communicates with researchers who inquire about the Museum's items and their contents. Upon a request for an appointment, researchers may directly access

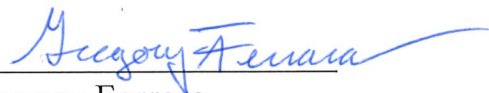
the Museum's historical items – including the Lindbergh Archive trial materials. However, all appointments are subject to the Museum Archivist's direct supervision and other precautions depending on the nature of the item being handled. Nevertheless, researchers are never permitted to alter the conditions of the item or expose it to foreign chemicals or other substances. NJSP also allows individuals to submit proposals for research testing to the Superintendent's Office for review.

7. Starting on April 4, 2024, researchers' access to the Lindbergh trial files was temporarily limited. Due to an update in NJSP's security protocol, researchers' access was limited while NJSP made arrangements to create/designate a new space to view the Lindbergh trial files. The updated security protocol provides a new viewing area for the Lindbergh trial files and limits researchers' access to the archive area and other files stored in the archive area. At this time, this new security protocol is in place and researchers may schedule an appointment to view the Lindbergh trial files accordingly.

8. Consistent with the Museum's common practices, the Lindbergh Archive is preserved consistent with generally accepted archival standards. Trial materials are kept in a locked, temperature and humidity-controlled room which is always actively monitored and secured. The envelopes and their contents are retained in polyester sleeves to allow individuals to view the materials, turn the pages, and avoid transferring any oils, acids, or other foreign substances. These envelopes and their contents are also placed in acid-free manuscript folders to further protect the materials from the risk of foreign substances. These acid-free manuscript folders are put in standard acid-free board archival boxes that are designed to reduce or negate the effects of migrant acidity and atmospheric pollutants.

9. I understand that Plaintiffs are demanding that they be given access to conduct DNA tests on backflaps of thirteen ransom envelopes and underneath several stamps on those envelopes, and on the envelopes and stamps of the two letters from the Lindbergh Archive. I understand that Plaintiffs are seeking to conduct tests from various techniques, including through “swabbing” and exposing the materials to foreign substances. The proposed tests, including exposing the materials to foreign substances, would violate the Museum’s archival practices which exist to preserve the items in the Lindbergh archive.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willingly false, I am subject to punishment.

/s/ 
Gregory Ferrara

Dated: June 19, 2025

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

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<hr/>		:	SUPERIOR COURT OF NEW
JONATHAN HAGEL,	:	:	JERSEY
MICHELE DOWNIE,	:	:	LAW DIVISION - MERCER
CATHERINE READ	:	:	COUNTY
	:	:	
Plaintiffs,	:	:	DOCKET NO.: MER-L-890-25
v.	:	:	
	:	:	<u>CIVIL ACTION</u>
DIVISION OF NEW JERSEY	:	:	
STATE POLICE	:	:	CERTIFICATION OF
	:	:	DANIEL KNOX
Defendant.	:	:	
<hr/>			

I, Daniel Knox, of full age, hereby certifies and says:

1. I am a Deputy Attorney General, employed by the State of New Jersey, Department of Law and Public Safety. I am representing the Defendant, Division of New Jersey State Police (NJSP), in the above captioned matter.

2. I am providing this certification in support of NJSP's opposition to Plaintiffs' Verified Complaint and Order to Show Cause. I have personal knowledge of the facts stated in this certification.

3. Attached to this certification as Exhibit A is a true and accurate copy of the unpublished opinion of Sudhakar v. NJSP, et al., MER-L-1706-22 (Law. Div. January 5, 2023). I am unaware of any contrary opinions.

4. Attached to this certification as Exhibit B is a true and accurate copy of the unpublished opinion of Sudhakar v. NJSP, et al., No. A-1764-22 (App. Div. Dec. 23, 2024). I am unaware of any contrary opinions.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willingly false, I am subject to punishment.

/s/ Daniel W. Knox
Daniel W. Knox

Dated: June 19, 2025

EXHIBIT A

PREPARED BY THE COURT

MARGARET SUDHAKAR,

Plaintiff,

v.

NEW JERSEY STATE POLICE,
NEW JERSEY ATTORNEY
GENERAL, NEW JERSEY
GOVERNOR PHIL MURPHY,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MERCER COUNTY
DOCKET NO. L-1706-22

CIVIL ACTION

**ORDER DENYING PLAINTIFF'S
ORDER TO SHOW CAUSE AND
DISMISSING COMPLAINT WITH
PREJUDICE**

THIS MATTER having come before the Court, the Hon. Robert Lougy, A.J.S.C., presiding, on the Verified Complaint in Lieu of Prerogative Writ and Order to Show Cause filed by Plaintiff Margaret Sudhakar, represented by Kurt W. Perhach, Esq., appearing;¹ and the Court having entered an order directing Defendants to show cause; and Defendants New Jersey State Police, New Jersey Attorney General, and Governor Phil Murphy, represented by Deputy Attorney

¹ Mr. Perhach entered his appearance after the filing of the Verified Complaint.

General Vivek N. Mehta, appearing, having filed opposition; and Plaintiff having filed a 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 5th day of January 2023 **ORDERED** that:

1. Plaintiff's application for the relief specified in her order to show cause is **DENIED**.
2. Plaintiff's complaint is **DISMISSED with prejudice**.

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

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

This matter comes before the Court as an action in lieu of prerogative writ and order to show cause. The complaint challenges the Defendants' refusal to permit DNA testing on envelopes, stamps, and pieces of wood relating to the kidnapping of Charles A. Lindbergh, Jr., located in the New Jersey State Police Museum. Because Plaintiff has no legal right under either OPRA or the common law to engage in such activity, the Court denies Plaintiff's request and dismisses her complaint.

Margaret Sudhakar is a citizen of the State of New Jersey, and a cognitive psychologist, researcher, and consultant. Compl. ¶ 2. Interested party Wayne

McDaniel is a citizen of the State of New York and is a film producer, screenwriter, and author. Id. at ¶ 3. Interested party Chuck Braverman is a citizen of the State of California and is a film director and producer. Ibid. All three have been working to compile a documentary on the Charles A. Lindbergh Jr. kidnapping. Ibid. Defendants are New Jersey State Police (“NJSP”), New Jersey Attorney General, and Governor Phil Murphy.

The NJSP Museum houses documents and historical items relating to the kidnapping of Charles A. Lindbergh, Jr. Certification of Museum Archivist Gregory Ferrara dated December 9, 2022, ¶ 3 (“Ferrara Cert.”). Plaintiff has retained several DNA experts to examine DNA evidence on several sealed envelopes and attached stamps in connection with the kidnapping housed in the NJSP Museum. Compl. at ¶ 4. Further, Plaintiff seeks to conduct DNA testing of a ladder and one piece of lumber from Hauptmann’s attic. Id. at ¶ 5. To test the wood, the examiners would need to remove six segments of wood, 1/16 inch in length. Ibid.

On March 2, 2022, Braverman emailed Defendant NJSP requesting to test the envelopes, stamps, and wood. Id. at ¶ 27; Pl.’s Exhibit 2. NJSP did not approve the request. Ibid. Braverman sent the same email to Defendant New Jersey Governor’s Office. Id. at ¶ 29. In response, Defendant indicated that they are not the custodian of the records. Ibid. On July 19, 2022, Braverman sent

online a request to Defendant New Jersey Attorney General's Office. Id. at ¶ 30. The letter was addressed to "Frank Caruso/Gov. Records 609-292-6830". Pl.'s Exhibit 3. Frank Caruso is not the records custodian for OAG. Def.'s Br. in Opp. 9 (citing Colon-Fung Cert. ¶¶ 4, 6). The OAG asserts that has no record of an OPRA request on the matter. Def.'s Br. in Opp. 9.

Plaintiff filed the verified complaint on September 28, 2022, alleging Defendants violated OPRA and the common law right of access. On December 15, 2022, Plaintiff submitted OPRA requests to the New Jersey Office of Attorney General and to the New Jersey State Police Department. Pl.'s Br. in Reply 4-5. Defendants denied the request. Pl.'s Br. in Reply 5. Plaintiff requests the Court to compel permission to test the stamps, envelopes, and remove six pieces of wood. Compl. at ¶ 42. Plaintiff requests reasonable attorney's fees under N.J.S.A. 47:1A-6 and N.J.S.A. 10:6-2(f). Ibid.

Plaintiff's complaint is procedurally improper, as Plaintiff filed her complaint prior to submitting an OPRA request and receiving a denial. That is, by itself, enough to dismiss her complaint in its entirety. However, given that she subsequently filed an OPRA request that was then denied, in the interests of judicial economy, and because any litigation sounding in OPRA or the common law concerning the post-complaint denial would be meritless, for the reasons as stated herein, the Court will address the parties' arguments.

Plaintiff argues the following. First, Plaintiff argues that Defendants failed to respond to the requests in a timely manner. Compl. at ¶ 37. Plaintiff argues that not allowing non-evasive testing to occur on the stamp, envelopes, and slivers of wood is a denial as a matter of law under N.J.S.A. 47:1A-5(l) and -6. Ibid. Plaintiff argues that no exemption exists under N.J.S.A. 47:1A-1 that would allow Defendant to argue that the documents would not be permissible to examine. Id. at ¶ 40. Plaintiff argues that the right to examine the documents under N.J.S.A. 47:1A-5 applies to DNA testing. Id. at ¶ 41. Further, Plaintiff argues the right to access public domain documents is a substantive right, privilege, or immunity secured by the Constitution and the laws of the State of New Jersey. Id. at ¶ 42.

Second, Plaintiff argues that the records Plaintiff requests are common-law public records and were deemed public records by New Jersey Governor Brendan Byrne. Id. at ¶ 44. Plaintiff argues that Plaintiff and the public have a cognizable interest in the subject matter. Id. at ¶ 45. Plaintiff argues the interest outweighs any State interest in preventing disclosure. Id. at ¶ 46. Plaintiff argues that Defendants' failure to produce the requested documents for non-evasive testing is a violation of the common law right of access. Id. at ¶ 47.

In opposition, Defendants argue the following. First, Defendants argue that Plaintiff filed the order to show cause and verified complaint after the forty-five day statute of limitations for OPRA actions and the common law and therefore

lacks standing. Def.'s Br. in Opp. 9-10. Defendants argue that Plaintiff filed the verified complaint on September 28, 2022, 205 days after NJSP denied Braverman's request, 191 days after the Governor's Office denied Braverman's request, and sixty-two days after Braverman should have received a response from the OAG. Id. at 10. Additionally, Defendants argue that Sudhakar did not submit any of the requests that are the basis of the complaint and Braverman did not joint as a party and is only listed as an interested party. Id. at 11. Therefore, Defendants argue that Sudhakar is out of time and her complaint cannot proceed. Ibid.

Second, Defendants argue that Plaintiff fails to make the most basic threshold showing to meet the prerequisites needed to bring an OPRA or common law right to access action. Id. at 11-12. Defendants argue that the Governor's Office is not the custodian of the historical items sought and therefore any claims against the Governor's Office must be dismissed. Id. at 13. Defendants argue that the claim against OAG fails because Braverman never submitted an OPRA request to OAG. Ibid.

Third, Defendants argue that Plaintiff cannot obtain relief against NJSP under OPRA because Braverman did not submit a proper OPRA request and cannot use OPRA to conduct potentially destructive tests that will permanently alter the condition of government records. Id. at 14. Defendants argue that Braverman's request to the NJSP did not comply with N.J.A.C. 13:1E-2.4 (a)-(b).

Id. at 16. Braverman emailed three members of the NJSP's Museum personnel but did not copy the records custodian. Ibid. Additionally, Defendants argue that Braverman's request did not contain enough information for NJSP to conclude that it was an OPRA request because it lacked any language identifying it as a request for government records under OPRA or the common law. Id. at 17. Defendants argue that, even if Braverman's request could be deemed a request under OPRA, his proposed course of conduct does not fall within OPRA's scope because OPRA nor the common law right to access contemplates testing or manipulation such that a government record may be permanently altered or damaged. Id. at 17-18.

Fourth, Defendants argue that the Court must dismiss Counts II and III because the proposed testing does not fall within the common law right of access and any speculative interests in making a documentary are far outweighed by NJSP's interest in, and obligation to, preserve the historical records for public access. Id. at 18-19. Defendants argue that Plaintiff offers no support that the right of access under the common law includes the right to manipulate, test, or permanently alter records. Id. at 19. Defendants argue that permitting the alteration or destruction of government records does not serve the common law's goal of transparency. Id. at 20. Finally, Defendants argue that Plaintiff's interest in uncovering information pertaining to the Lindbergh kidnapping for a documentary does not outweigh NJSP's interest in preserving evidence and

making it accessible to the public. Id. at 21. Moreover, Defendants argue that avoiding alteration and potential damage preserves the integrity of the items for when future technology may allow testing that carries fewer risks. Id. at 22.

In reply, Plaintiff begins by arguing the following in rebuttal to Defendants' arguments. First, Plaintiff argues that Plaintiff has now properly submitted two OPRA requests and have therefore resuscitated the statute of limitations. Pl.'s Br. in Reply 4-5. Second, Plaintiff concedes that the claim against the Governor's Office can be dismissed. Id. at 7. However, Plaintiff argues that the Attorney General's Office is a proper party because it oversees of law enforcement operations in the State of New Jersey. Ibid.

Third, Plaintiff argues that the complaint complies with the essence of OPRA and Governor's Byrne's Executive Order number 110. Id. at 8. Plaintiff argues that Defendants have not pointed to an OPRA exception. Ibid. Plaintiff argues that she will coordinate efforts with the NJSP. Ibid. Plaintiff argues that the State has already permanently altered the ladder. Id. at 8-9. Plaintiff argues that no reasonable expectation attaches to the back of the envelopes and the top right corner of the envelopes are relevant for historical preservation or for criminal history beyond the evidence they can provide, and that Defendants presume that the analysis will damage the envelopes. Id. at 9. Plaintiff argues that the case is

about transparency. Id. at 10. Finally, Plaintiff emphasizes that the public interest in the results of the proposed examination exceed the State's interests. Id. at 11.

“OPRA provides for ready access to government records by the citizens of this State.” Burnett v. Cty. of Bergen, 198 N.J. 408, 421-22 (2009) (citing Mason v. City of Hoboken, 196 N.J. 51, 64-65 (2008)). “The purpose of OPRA ‘is to maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process.’” Times of Trenton Publ’g Corp. v. Lafayette Yard Cmty. Dev. Corp., 183 N.J. 519, 535 (2005) (quoting Asbury Park Press v. Ocean Cty. Prosecutor’s Off., 374 N.J. Super. 312, 329 (Law Div. 2004)). Accordingly, OPRA directs that “all government records shall be subject to public access unless exempt,” and “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.

The public’s right of access under OPRA is subject to two limitations. First, the requested document or record must meet the statutory definition of “government record” as defined under OPRA. Ibid. OPRA defines a government “record” as “any paper, written or printed book, document . . . maintained or kept on file. . . or that has been received in the course of his or its official business by any such officer, commission, agency, or authority of the State” N.J.S.A. 47:1A-1.1. Second, a record that otherwise meets the definition of a “government

record” may be exempt from disclosure “by other statutory provisions or executive orders ... or ... due to a recognized privilege or grant of confidentiality established in or recognized by the State Constitution, statute, court rule or judicial decision.” Wilson v. Brown, 404 N.J. Super. 557, 570-71 (App. Div. 2009).

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.

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.

The common law right of access is more wide-ranging than OPRA. Mason v. City of Hoboken, 196 N.J. 51, 67 (2008). While OPRA does not limit the common law right of access to a government record, N.J.S.A. 47:1A-8, the right of access is qualified and “the showing a requester must make to gain access is greater than that required under ORPA.” N. Jersey Media Grp. v. Bergen Cty. Prosecutor’s Office, 447 N.J. Super. 182, 210 (App. Div. 2016). The common law right of access is governed by a three-part balancing test: “(1) The records must be common-law public documents; (2) the person seeking access must establish an interest in the subject matter of the material; and (3) the citizen’s right to access must be balanced against the State’s interest in preventing disclosure.” Keddie v. Rutgers, 148 N.J. 36, 50 (1997) (citations omitted).

Under the first prong of the common law right of access test, the definition of a “public record” is broader than OPRA’s definition of “government record.” Mason, 196 N.J. at 67. “Public records available for inspection under the common law include any records made by public officers in the exercise of their functions.” Wilson v. Brown, 404 N.J. Super. 557, 581 (App. Div. 2009). Under the common law right of access, public records also include documents filed in a public office, and those that are in the possession of a public agency but were prepared by a third party. Keddie, 148 N.J. at 49;

see also Paff v. Director, OAE, 399 N.J. Super. 632, 646 (Law Div. 2007) (finding documents prepared by, collected by, or received by government agency from outside source qualify as common law records).

The “interest” of the party seeking the records under the second prong of the test can be a “a wholesome public interest or a legitimate private interest.” Higg-A-Rella v. County of Essex, 141 N.J. 35, 47 (1995). For example, a newspaper’s interest in ““keep[ing] a watchful eye on the workings of public agencies”” is sufficient to accord standing under the common law. Red Bank Register v. Bd. of Educ., 206 N.J. Super. 1, 9 (App.Div.1985) (quoting Nixon v. Warner Commc’ns, Inc., 435 U.S. 589, 598 (1978)).

The final factor requires a court to balance the plaintiff’s interest against the government agency’s interest in confidentiality and nondisclosure. The balancing test includes the following factors:

- (1) the extent to which disclosure will impede agency functions by discouraging citizens from providing information to the government;
- (2) the effect disclosure may have upon persons who have given such information, and whether they did so in reliance that their identities would not be disclosed;
- (3) the extent to which agency self-evaluation, program improvement, or other decision making will be chilled by disclosure;
- (4) the degree to which the information sought includes factual data as opposed to evaluative reports of policymakers;
- (5) whether any findings of public misconduct have been insufficiently corrected by

remedial measures instituted by the investigative agency; and (6) whether any agency disciplinary or investigatory proceedings have arisen that may circumscribe the individual's asserted need for the materials.

[Loigman v. Kimmelman, 102 N.J. 98, 113 (1986).]

Although the exemptions identified in OPRA do not abrogate a court of its duty to perform the balancing test under the common law, “a court may look to the exclusions in OPRA as expressions of legislative policy on the subject of confidentiality.” Bergen Cty. Improvement Auth. v. N. Jersey Media Grp., Inc., 370 N.J. Super. 504, 520 (App. Div. 2004). Accordingly, if in balancing the factors, “the requested material appears on its face to encompass legislatively recognized confidentiality concerns, a court should presume that the release of the government record is not in the public interest.” Michelson v. Wyatt, 379 N.J. Super. 611, 621 (App. Div. 2005).

Plaintiff also relies upon Governor Byrne's Executive Order 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.” E.O. 110, Section 1 (Byrne 1981). E.O. 110 also grants the NJSP 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 Section 2 (emphasis added).]

Turning to the merits, Plaintiff's complaint fails to state a claim under either OPRA or the common law. The relief that she seeks – the physical examination, analysis, extraction, and partial destruction – of property that belongs to Defendants is not a records request. Plaintiff provides no authority in either statute or case law for the extraordinary remedy that she seeks and this Court does not hesitate to deny the request. Simply put, OPRA is not the vehicle by which a citizen can march up to a museum and demand that the custodians of historical artifacts and documents surrender the State's treasures for analysis, alteration, and destruction.

The procedural defenses advanced by Defendants are sound and, as indicated in the beginning, are sufficient to dismiss Plaintiff's complaint. Plaintiff did not file an OPRA request; therefore, Defendants did not deny her access under OPRA. Even if the Court were to accept that the various communications to various employees of Defendants constitute an OPRA request – which they clearly

do not – then Plaintiff’s complaint is far out of time and therefore barred. Mason, 191 N.J. at 68 (holding that OPRA actions subject to forty-five day statute of limitations).

Plaintiff’s proposed course of conduct does not fall within the scope of OPRA nor the common law right of access. 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.” Testing the envelopes, stamps, and wood would permanently alter the condition of the items. Plaintiff’s expert does not dispute that the testing will result in permanent alteration of the items and acknowledges that they may be damaged as a result. See Pl.’s Ex. 1. Plaintiff points to no language in OPRA, nor under the common law right to access, contemplating testing or manipulation such that a government record may be permanently altered or damaged.

Plaintiff’s request is inconsistent with the aim of OPRA, which remains subject to “reasonable controls . . . to prevent abuse and protect the public officials involved.” See MAG, 375 N.J. Super. at 546. It also conflicts 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 E.O. 110 (Byrne 1981). Further, it is inconsistent with the goal of the common law right of access. Altering or destroying government records does not serve the common law’s overarching goal of transparency. DNA testing may allow Plaintiff to pursue her

individualized interest but depriving the public to access to these items in their original state does not serve the public interest.

Accordingly, the Court dismisses Plaintiff's complaint with prejudice. Per Rule 2:4-1(a), Plaintiff has forty-five days from the entry of this Order to file an appeal.

EXHIBIT B

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1764-22**

MARGARET SUDHAKAR,

Plaintiff-Appellant,

v.

**NEW JERSEY STATE POLICE
and NEW JERSEY ATTORNEY
GENERAL,**

Defendants-Respondents,

and

GOVERNOR PHIL MURPHY,

Defendant.

Argued October 29, 2024 – Decided December 23, 2024

Before Judges Smith, Chase and Vanek.

On appeal from the Superior Court of New Jersey,
Law Division, Mercer County Docket No. L-1706-22.

Kurt W. Perhach (Elm Ridge Legal Consulting)
argued the cause for appellant.

Vivek N. Mehta, Deputy Attorney General, argued the cause for respondents (Matthew J. Platkin, Attorney General, attorney; Sara M. Gregory, Assistant Attorney General, of counsel; Emily M. Bisnauth, Vivek N. Mehta and Daniel W. Knox, Deputy Attorneys General, on the brief).

PER CURIAM

Plaintiff Margaret Sudhakar appeals a trial court order denying her order to show cause (OTSC) and dismissing her complaint against defendants New Jersey State Police (NJSP), the New Jersey Attorney General (the AG), and Governor Phil Murphy alleging the denial of requests to perform DNA testing on historical documents from the Lindbergh kidnapping case constitutes a violation of the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to 13, the common law right of access, and Governor Brendan Byrne's Executive Order 110. After a thorough review of the record and our jurisprudence, we affirm.

I.

We glean the salient facts relevant to our disposition from the record. This appeal centers on plaintiff's search for DNA evidence related to the kidnapping of infant Charles A. Lindbergh, Jr. on March 1, 1932. Between the kidnapping and the discovery of the infant's body, an unidentified individual sent numerous ransom notes to the Lindbergh family home. After law enforcement investigations, Bruno Richard Hauptmann was tried, convicted,

and ultimately executed in 1936 for the kidnapping and murder of the infant. Hauptmann proclaimed his innocence up until his death.

The NJSP Museum & Learning Center (the Museum) is the repository of the NJSP's historical recordings, including approximately 225,000 documents and other materials related to the Lindbergh case. Due to continued interest in the case, Governor Brendan Byrne signed Executive Order 110 (the EO) on October 9, 1981, providing the public with conditional access to evidence associated with the Lindbergh case. Acknowledging that reasonable measures needed to be implemented to ensure preservation of these historical items, the EO authorized the Superintendent of the NJSP to establish procedures to protect the files, records, and exhibits from the risk of damage or mutilation, while allowing the public to examine, inspect, and copy them.

The NJSP maintains the historical items in a temperature and humidity controlled locked room with monitored access. Evidence envelopes and their contents are housed in polyester sleeves to allow individuals to inspect the items without directly touching the artifacts or transferring any foreign substance to them. Those sleeves are retained in manuscript folders encased in archival boxes, both of which are acid-free.

On March 2, 2022, film director and producer Michael Braverman sent a

letter to the NJSP by email, seeking permission to extract DNA through undescribed "non-evasive"¹ testing of fourteen envelopes, eleven stamps and a piece of wood from the historical repository maintained by the NJSP under the EO. Braverman did not describe how the DNA samples would be extracted from the artifacts without damaging or altering them in any way. One week later, the NJSP denied the request.

Braverman forwarded a similar request to the Governor's Office, which responded that it was not the custodian of the items being sought. Braverman then sent a July 19 email to "Frank Caruso/Gov. Records 609-292-6830," the Executive Director of the Government Records Council (GRC), requesting permission to accomplish DNA testing of items in the NJSP Museum. The OAG's records custodian never received that request and no proof of delivery to the OAG was submitted to the trial court.

On September 28, 2022, plaintiff filed a verified complaint in lieu of prerogative writs and OTSC, alleging a violation of OPRA, the common law right of access, and the EO, requesting that the court compel the DNA testing of the envelopes and stamps maintained by the NJSP related to the Lindbergh

¹ Neither party offered a definition of "non-evasive."

kidnapping.² Braverman was not a plaintiff on the filing.

The OTSC was coupled with a letter from a forensic biology specialist, Arthur Young of Guardian Forensics, describing the methodology for the DNA testing he proposed to undertake to determine whether Hauptmann had licked the stamps and sealed the envelopes of the ransom letters sent to the Lindbergh home. Although Young characterized his untested "canned-air technique" for extracting DNA samples from the envelopes and stamps as "non-destructive," the technique required him to "neutraliz[e]" the adhesive on the historical artifacts by directly applying a chemical fluid to expose approximately ninety percent of the back flap of each envelope and the back of each stamp. After removal of a portion of the adhesive on the historical document and swabbing for DNA, he then proposed to reattach the envelopes and stamps in their original position with a new adhesive. Young advised that this method had only been carried out once on an envelope from 2002, and he did not rule out damage resulting from the proposed testing.

The OAG opposed the OTSC with multiple certifications including one from Gregory Ferrara, who stated the Museum regularly facilitates and

² Plaintiff initially sought permission to test wood from a ladder allegedly related to the kidnapping but has abandoned that request on appeal. Thus, our decision does not address that issue.

responds to requests for information from researchers, allowing access under the direct supervision of museum archivists and implementing specific precautions or conditions depending on the item being examined. Ferrara certified that researchers are not permitted to expose Museum artifacts to foreign chemicals or other substances, nor are they permitted to alter the condition of the items. The OAG also submitted a certification from Michael J. Kennedy, Jr., the Director of NJSP Office of Forensic Sciences, opining that the DNA extraction tests proposed by plaintiff will permanently alter the condition of each of the historical items tested and is potentially destructive to the artifacts.

After the OAG opposed the OTSC, plaintiff submitted her own OPRA requests to the OAG and NJSP on December 15, seeking the same DNA testing as Braverman.³ The OAG denied plaintiff's requests. Plaintiff did not move for leave to file an amended verified complaint to seek relief related to her OPRA requests. Instead, she submitted reply certifications informally asking that her requests be "merged" with this case and that Braverman be considered a plaintiff on the litigation she filed.

Plaintiff also submitted a reply certification from Young asserting that

³ Plaintiff had not submitted her own OPRA request prior to the filing of her verified complaint and OTSC.

he was working on obtaining several envelopes from the 1920s and 1930s to test his technique, since he had not successfully utilized this extraction method on historical documents of the same age as the ones he sought to test. Nonetheless, Young offered to show how he can extract a DNA swab by opening the sealed back flaps of the envelopes and removing a portion of each stamp prior to reattaching them. The testing he described involves removal of some of the existing adhesive on the historical document through "neutralizing" and then adding another type of adhesive to the artifact.

Plaintiff also included photographs and a certification that the Museum suffered from a water leak on or about March 24, 2022, in her reply. However, plaintiff did not assert any items she sought to test were damaged or destroyed as a result of the leak.

After oral arguments, the trial court issued a January 5, 2023 order accompanied by a written decision denying plaintiff's OTSC and dismissing the verified complaint. The trial court found that because "[p]laintiff filed her complaint prior to submitting an OPRA request and receiving a denial," this "by itself, [was] enough to dismiss her complaint in its entirety." The trial court reasoned that since "[p]laintiff did not file an OPRA request . . . [d]efendants did not deny her access under OPRA."

Nonetheless, the trial court addressed the substance of the complaint, ruling plaintiff had no right under either OPRA or the common law to proceed with the requested DNA testing, which risked permanently altering the condition of the items. The trial court found "OPRA is not the vehicle by which a citizen can march up to a museum and demand that the custodians of historical artifacts and documents surrender the [AG's] treasures for analysis, alteration and destruction" and that the request was inconsistent with the right of common law access.

This appeal followed.⁴

II.

After our de novo review, we are unpersuaded that the trial court erred in finding plaintiff's complaint was procedurally deficient. In re N.J. Firemen's Ass'n Obligation to Provide Relief Applications Under Open Pub. Recs. Act, 230 N.J. 258, 273-74 (2017) (a court's "determinations about the applicability of OPRA and its exemptions are legal conclusions and are therefore subject to de novo review").

"OPRA's purpose is 'to maximize public knowledge about public affairs

⁴ Plaintiff appealed the denial of her December 15, 2022 OPRA requests to the GRC on March 2, 2023 (GRC Complaints No. 2023-49 and 2023-50). The GRC denied relief due to the pendency of this appeal.

in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process.'" Mason v. City of Hoboken, 196 N.J. 51, 64-65 (2008) (quoting Asbury Park Press v. Ocean Cnty. Prosecutor's Off., 374 N.J. Super. 312, 329 (Law Div. 2004)).⁵ OPRA establishes with specificity the process by which a requestor may challenge an OPRA denial, id. at 66 (citing N.J.S.A. 47:1A-6), providing that:

[a] person who is denied access to a government record by the custodian of the record, at the option of the requestor . . . may . . . institute a proceeding to challenge the custodian's decision by filing an action in Superior Court which shall be heard in the vicinage where it is filed by a Superior Court Judge who has been designated to hear such cases because of that judge's knowledge and expertise in matters relating to access to government records;

[N.J.S.A. 47:1A-6.]

OPRA additionally provides that "[t]he right to institute any proceeding under this section shall be solely that of the requestor." Ibid.

OPRA actions are subject to a forty-five-day limitations period. Mason, 196 N.J. at 68. The Court in Mason reasoned that the forty-five-day time frame "provides certainty and repose to public bodies faced with numerous OPRA requests. At the same time, it offers the public ample opportunity to

⁵ We apply the OPRA statute in effect at the time plaintiff's OTSC was decided, prior to the 2024 amendment.

challenge a denial of access." Id. at 70.

We find no error with the trial court's determination that plaintiff's verified complaint was procedurally improper. The Court in Firemen's Ass'n, 230 N.J. at 278, made clear that litigation cannot be initiated except by the requestor, after a public agency's denial. Plaintiff submitted the December 15, 2022 OPRA requests after she filed suit and then failed to move for leave of court to amend the verified complaint to seek relief from the denial of those requests. The trial court lacked the authority under OPRA to consider plaintiff's newly-filed requests because they were not the subject of the verified complaint before the court. Plaintiff's argument that there was no procedural defect since the trial court and the OAG were aware of her post-filing OPRA requests and subsequent denials through her reply brief filed prior to the OTSC hearing is not supported by prevailing law.

Since OPRA explicitly confers the right to initiate suit only upon the requestor, Braverman was the only individual with the right to challenge the denial. Ibid. Even if we considered Braverman's requests, we discern no error with the trial court's finding that the verified complaint was barred by the forty-five-day limitations period. Braverman's request was filed on March 2, 2022, while plaintiff's verified complaint and OTSC was not filed until

September 28, 2022. There is no evidence in the record that the OAG received any further requests from Braverman within the forty-five-day limitations period. Therefore, even if we had considered plaintiff's verified complaint and OTSC as properly pursuing Braverman's requests, the action would be time-barred as filed more than forty-five days from the March 9, 2022 denial.

For these reasons, we conclude the trial court did not err in denying plaintiff's OTSC and dismissing the verified complaint based solely on procedural deficiencies. Although the trial court substantively addressed the relief plaintiff sought, since the claims are procedurally barred our analysis need not go further.

To the extent we have not addressed any of plaintiff's remaining arguments on the procedural issues, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION

